

Excerpts of Deposition of Kevin Hallock

June 7, 2013

REDACTED VERSION

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
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6 IN RE: HIGH-TECH EMPLOYEE)
7 ANTITRUST LITIGATION)
8) No. 11-CV-2509-LHK
9 THIS DOCUMENT RELATES TO:)
10 ALL ACTIONS.)
11 _____)
12
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14 HIGHLY CONFIDENTIAL
15 VIDEO DEPOSITION OF KEVIN HALLOCK
16 June 7, 2013
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19 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR
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10:24:38 1 focusing on a very narrow set.

10:24:41 2 Q. Was there anything in the expert report of
10:24:44 3 Kevin Murphy that contradicted the opinions that you
10:24:47 4 reached in this case?

10:24:51 5 MS. DERMODY: Object to form.

10:24:59 6 THE WITNESS: Again, I'm not sure what you mean
10:25:00 7 by "contradicted."

10:25:01 8 MR. KIERNAN: Q. Was there anything in
10:25:03 9 there that was inconsistent with the opinions that
10:25:04 10 you reached in this case?

10:25:05 11 MS. DERMODY: Object to form.

10:25:11 12 THE WITNESS: I'd have to look at it. I mean,
10:25:13 13 again, I'd be happy to look at parts. If you think this
10:25:15 14 part is inconsistent, I could comment on whether that
10:25:17 15 would be, but I -- I haven't read it in a while. And
10:25:21 16 sort of reading it is sort of trying to learn about what
10:25:24 17 was going on.

10:25:25 18 MR. KIERNAN: Q. Was there anything in his
10:25:26 19 report that caused you to do additional
10:25:29 20 investigation or examination in connection with
10:25:35 21 reaching your opinions in this case?

10:25:36 22 A. Again, I can't recall that.

10:25:42 23 Q. Is that something you would have done?

10:25:45 24 MS. DERMODY: Object to form.

10:25:47 25 THE WITNESS: Sorry, could you ask that again.

10:25:49 1 MR. KIERNAN: Q. Yeah. If there was
10:25:50 2 something in Dr. Murphy's report that was
10:25:53 3 inconsistent with the opinions that you were
10:25:54 4 reaching in this case, would that have caused you to
10:25:59 5 do additional investigation or follow-up?

10:26:04 6 A. I think if I found anything in working on the
10:26:08 7 case, or any of the depositions, there had to be six
10:26:14 8 feet of them, or maybe eight feet of them stacked up in
10:26:18 9 my office, that was relevant to the case or to the
10:26:22 10 opinions I was making, I would look into that.

10:26:27 11 Q. And do you recall doing that?

10:26:31 12 A. I did it -- there were all kinds of things I
10:26:33 13 found that I thought were relevant. That's why this
10:26:35 14 thing is so big. But I don't recall specifically with
10:26:40 15 Professor Murphy -- Professor Murphy's report.

10:26:45 16 Q. Have you discussed this case with the
10:26:46 17 plaintiffs? The named plaintiffs?

10:26:49 18 A. I have not. I'm sorry. Do you mean the named
10:26:52 19 plaintiffs as in -- could you tell me who the named
10:26:55 20 plaintiffs are?

10:26:55 21 Q. Do you know who they are?

10:26:57 22 A. I don't know them personally. You mean the
10:26:59 23 individuals?

10:27:00 24 Q. Uh-huh.

10:27:01 25 A. I don't know them, no.

10:27:05 1 Q. Have you interviewed any current or former
10:27:08 2 employees of any of the defendant companies?

10:27:17 3 A. For the purposes of this case? No.

10:27:23 4 Q. Have you interviewed any of the current or
10:27:25 5 former employees -- strike that.

10:27:27 6 Have you interviewed any of the current or
10:27:28 7 former managers at any of the defendant companies?

10:27:33 8 A. Again, for the purposes of this case, no.

10:27:38 9 Q. What about outside of this case?

10:27:39 10 A. The reason I say that is because I'd likely
10:27:47 11 know people some way or another, or met, who have worked
10:27:51 12 for -- maybe been my students, who -- but I don't have
10:27:53 13 any specific recollection of that. And certainly
10:27:57 14 haven't spoken with anybody about the case.

10:27:59 15 Q. Okay. One last line. Two minutes.

10:28:06 16 A. That's okay.

10:28:07 17 Q. All right. Since submitting your report, have
10:28:09 18 you done any additional work in connection with this
10:28:13 19 case?

10:28:14 20 A. Yes.

10:28:15 21 Q. What have you done?

10:28:17 22 A. I prepared for the deposition.

10:28:23 23 Q. Anything else?

10:28:25 24 A. Not that I can think of, no. I mean, I thought
10:28:28 25 about the case. I remember writing a note, but that was

11:18:05 1 There are others. Those I remember by the end.

11:18:18 2 Q. Okay. And paragraph 7 of your report sets

11:18:28 3 forth the assignments that you were given?

11:18:31 4 A. Right.

11:18:32 5 Q. And these are the two questions that you

11:18:34 6 answered?

11:18:35 7 A. These were -- I was asked by counsel to do

11:18:39 8 those two things, which are -- which I paraphrased for

11:18:43 9 you earlier. Those were the two items. The first being

11:18:49 10 whether defendants used formal systems, and the second

11:18:53 11 being about the suppression of pay for the employees or

11:19:02 12 workers.

11:19:03 13 Q. And then focusing on the first assignment --

11:19:06 14 A. Yes.

11:19:06 15 Q. -- 7.a., have you been involved in another case

11:19:13 16 where you were -- where you completed a similar

11:19:16 17 assignment?

11:19:19 18 A. Have I been involved in another case where I

11:19:21 19 was asked to analyze pay practices to determine whether

11:19:24 20 they were -- whether defendants used formal

11:19:28 21 administrative pay systems? No.

11:19:35 22 I do teach about formal administrative pay

11:19:37 23 systems and write about them, but I haven't done this --

11:19:43 24 I've only been -- this is my third deposition, so I

11:19:46 25 haven't done this before in a case like this.

11:19:50 1 Q. And have you -- has it been a subject of any of
11:19:55 2 your publications to research whether a particular
11:19:59 3 company or companies had formal administrative pay
11:20:04 4 systems?

11:20:11 5 A. I published a book last year called "Pay." And
11:20:20 6 in that book -- I reference the book in the report -- I
11:20:22 7 describe structures, formal pay systems, things like job
11:20:30 8 analysis and evaluation and bands and minima and maxima.
11:20:37 9 But if your question is about whether I have determined
11:20:40 10 whether a particular organization has these, I don't
11:20:44 11 remember doing a research project on that or determining
11:20:47 12 that. Many mature organizations have these kinds of
11:20:57 13 systems. It's sort of not uncommon to have systems like
11:21:02 14 this.

11:21:03 15 Q. Uh-huh.

11:21:04 16 A. In fact, I teach -- I teach in a professional
11:21:07 17 master's program where students are basically getting a
11:21:14 18 master's degree. It's called an ILR, but it's really
11:21:19 19 a -- many of them are concentrating in human resources
11:21:22 20 and organizations. And one of the courses is called
11:21:24 21 Managing Compensation.

11:21:25 22 And part of what I did in that course -- I'm
11:21:28 23 not teaching it this year, but I teach the same methods
11:21:33 24 in a broader course for a broader audience -- but those
11:21:36 25 professional master's students are basically being

11:21:39 1 trained to know how to manage these administrative pay
11:21:42 2 systems.

11:21:43 3 Q. And can you think of any examples of what you
11:21:50 4 referred to as mature company that do not have a formal
11:21:55 5 administrative pay system.

11:22:04 6 A. Again, I haven't -- I had unusual access here
11:22:09 7 to the organizations. I can't think of any off the top
11:22:11 8 of my head that don't have at least features that I'm
11:22:16 9 describing here. Things like, for example, each
11:22:20 10 defendant here is using market data. Defendants are --
11:22:26 11 you know, have other features that are kind of hallmarks
11:22:29 12 of these kinds of plans. I can't think of one off the
11:22:31 13 top of my head.

11:22:34 14 Q. And describe for me the methodology you used in
11:22:41 15 determining whether each defendant had a formal
11:22:46 16 administrative pay system?

11:22:48 17 A. Well, there is a section in the report where I
11:22:53 18 go through that. It's called Section V, starts on page
11:22:58 19 15. And in that, the way I wrote it here, which I think
11:23:02 20 is giving you an idea of my thinking, was that I -- in
11:23:10 21 the beginning part of the report, I talk about some
11:23:13 22 features of pay systems. Some of the first exhibits --
11:23:16 23 I think they might be Exhibits 2 through 6, I can
11:23:21 24 check -- are some description of some features of formal
11:23:26 25 systems. Make sure I've said that correctly. 2 through

11:23:30 1 6.

11:23:38 2 And then I go through in Section V, starting on
11:23:42 3 page 15, each defendant of the seven defendants document
11:23:50 4 evidence that they had formalized compensation systems,
11:23:53 5 and then have some examples that I found from the
11:23:56 6 materials that I reviewed.

11:23:58 7 Q. And so what was your method that you used to
11:24:04 8 reach the conclusion that they had formal pay systems?

11:24:12 9 A. My -- I think it -- I think it's what I've
11:24:16 10 said. I tried to describe here to -- in the report,
11:24:22 11 examples of how systems like this can be designed. Not
11:24:26 12 precisely, but the sort of formal -- or the features of
11:24:29 13 these systems. I call that section Compensation System
11:24:34 14 Design.

11:24:34 15 And then I read all of the materials on
11:24:39 16 these -- I read the materials on these defendants and
11:24:43 17 found in each of the seven cases, many features that are
11:24:48 18 consistent with these kinds of systems.

11:24:49 19 So for example, the one I just opened to when
11:24:52 20 you asked about this is Adobe. Adobe has job families,
11:24:57 21 grades within, and features like salary minimum,
11:25:03 22 midpoints and maximum.

11:25:04 23 Q. And are there particular features that a
11:25:09 24 company must have for you to categorize it as a formal
11:25:12 25 pay system?

11:56:12 1 discussing pay throughout this report. I could give you
11:56:14 2 some of those examples. You could sort of think in here
11:56:18 3 is not really exactly what was in the manager's mind,
11:56:21 4 but sometimes you see people discussing compensation of
11:56:26 5 particular individuals. And you could see some of their
11:56:32 6 thought processes.

11:56:35 7 An example, and I just flipped to this page,
11:56:39 8 there is a quote here, this is from -- this is from
11:56:47 9 Adobe. Someone -- Ms. Morris wrote, [REDACTED] is a strong
11:56:56 10 negotiator and would be expecting to keep his base
11:56:58 11 salary, which he puts at [REDACTED] however, I am
11:57:01 12 recommending that he come in slightly below in base
11:57:03 13 because of internal equity relative to [REDACTED] and
11:57:07 14 because with AIP, his overall total cash will be -- and
11:57:10 15 so on.

11:57:10 16 One of the things that she was considering in
11:57:12 17 that case was -- I don't know if this is someone --
11:57:16 18 can't remember if coming from outside the company into
11:57:19 19 Adobe or from within Adobe to a new position. But one
11:57:25 20 of the things that that manager is considering is his
11:57:34 21 current salary, which she says he claims was [REDACTED]
11:57:36 22 But also his relative position to someone else who was
11:57:40 23 already in the organization.

11:57:41 24 So one of the things she was thinking about,
11:57:45 25 which is -- you know, seems reasonable, what was this

11:57:48 1 person making prior to bringing them into the company.
11:57:51 2 And the other was how will that person sit relative to
11:57:55 3 the people in his or her work group or at that level or
11:57:59 4 something like that.

11:58:00 5 So she was considering a thing that I hadn't
11:58:02 6 mentioned earlier, which is what someone is already
11:58:05 7 making if they're coming in from the outside. So that's
11:58:09 8 one I sort of neglected to say. I'm sure there are many
11:58:12 9 others.

11:58:14 10 MR. KIERNAN: Q. Many others what?

11:58:16 11 A. Many other things. I mentioned internal
11:58:18 12 equity, I mentioned contributions, but other things that
11:58:22 13 people consider when making pay decisions are how much
11:58:26 14 is one making already, or somewhere else. Or is that
11:58:34 15 person likely to leave the job. Are they more mobile.
11:58:37 16 You know, these are other kinds of features I said
11:58:40 17 before. I gave you a list of some, then I remembered
11:58:42 18 geography, now I'm remembering others.

11:58:46 19 Q. And do you agree that not each manager will
11:58:50 20 consider the same exact factors in determining pay for
11:58:53 21 an individual?

11:58:55 22 MS. DERMODY: Object to form.

11:59:00 23 THE WITNESS: You said would agree would not,
11:59:02 24 so I just want to make sure I've got the -- are you
11:59:05 25 asking me if all managers will use exactly the same

11:59:09 1 criteria for determining compensation? Is that what you
11:59:13 2 are asking?

11:59:16 3 MR. KIERNAN: Q. (Nonverbal response.)

11:59:19 4 A. I think that managers in these organizations
11:59:26 5 were all following a similar structure. They had
11:59:29 6 administrative pay systems, formal pay systems. There
11:59:31 7 was lots of information about communicating to managers
11:59:34 8 how to do that. PowerPoint presentations and other
11:59:39 9 things, as I've mentioned before, in exhibits. Whether
11:59:42 10 every manager was doing it precisely the same way, I
11:59:45 11 can't -- I can't tell for sure.

11:59:50 12 Q. And you've written in your recent textbook
11:59:53 13 about how practice can vary from the actual compensation
11:59:59 14 design. You recall that?

12:00:02 15 A. Practice could vary from the design?

12:00:05 16 Q. Uh-huh. What the managers actually do in
12:00:07 17 practice in making compensation decisions.

12:00:12 18 A. I'm not sure if -- could you show me where I
12:00:18 19 say that?

12:00:19 20 Q. I don't have it with me.

12:00:20 21 A. Okay.

12:00:22 22 Q. Do you agree with that?

12:00:23 23 A. Do I agree with -- that practice can differ
12:00:27 24 from design? I think a framework or a design is set up,
12:00:34 25 but there are certainly instances when people could

12:00:39 1 differ from that design.

12:00:40 2 For example, it's important -- one practice
12:00:46 3 that many firms would like to do is make sure that their
12:00:50 4 compensation systems are gender neutral. So, you know,
12:00:56 5 you wouldn't want to be paying people who are doing the
12:00:58 6 same work differently if they have different gender.

12:01:02 7 There may be a manager who discriminates, and that would
12:01:05 8 be an example of someone who could sort of do different
12:01:09 9 from the structure and, you know, do something
12:01:15 10 inconsistent with the setup. But obviously, you don't
12:01:20 11 want to have happen the circumstance of discrimination.

12:01:25 12 Q. And I probably should have started with this.
12:01:27 13 What do you mean by "formalized pay system"? Actually,
12:01:30 14 strike that.

12:01:31 15 A. Okay.

12:01:31 16 Q. Throughout your report, you mentioned
12:01:33 17 formalized pay system, and then you also used the words
12:01:40 18 formalized compensation system, and then you also used
12:01:43 19 the words formal compensation structure. Are those
12:01:48 20 interchangeable? In other words, do you mean the same
12:01:52 21 thing?

12:01:53 22 A. They're similar, but I want to make sure -- the
12:01:57 23 word structure might be -- in some circumstances,
12:02:00 24 someone might use structure -- they might have something
12:02:02 25 particular in their mind. Those are all very related.

12:02:07 1 Lot of the issues we've been talking about today are
12:02:09 2 related to those -- all of those things.

12:02:15 3 Sometimes structure, though, the word structure
12:02:18 4 is the one that struck me. So can you tell me the other
12:02:21 5 two? One was structure --

12:02:23 6 Q. One is formalized pay system, formalized
12:02:26 7 compensation system and formal compensation structure.

12:02:31 8 A. Okay. So pay and compensation are sometimes
12:02:33 9 used interchangeably.

12:02:35 10 Q. Are you using them interchangeably?

12:02:40 11 A. I'm not always -- depends on a specific -- you
12:02:49 12 know. There is the difference between sometimes folks
12:02:56 13 think that salary is all of compensation, but it could
12:03:00 14 also include bonus or it could include equity, stock.
12:03:06 15 So sometimes compensation or pay is a broader term than
12:03:09 16 salary.

12:03:10 17 The thing that I wanted to focus on is, though,
12:03:13 18 that the word structure, sometimes that could be more
12:03:17 19 associated with one of these pictures like we were
12:03:20 20 talking about before the break. Like figure 7 and other
12:03:22 21 figures that are associated in here. So while they're
12:03:26 22 very similar ideas, I don't want to say they're exactly
12:03:28 23 synonyms, because I think in some circumstance someone
12:03:31 24 might be being more specific with them.

12:03:33 25 Q. Okay. And what do you mean by formalized pay

12:03:38 1 system?

12:03:40 2 A. I mean -- well, again, there are a lot of
12:03:45 3 things that go into a formalized pay system. And that's
12:03:49 4 really what I've started on page -- I think it was 5.
12:03:55 5 There are lots of features that could be things like
12:04:00 6 using market data.

12:04:02 7 So even that, there is a good example that even
12:04:05 8 having a system doesn't mean it's sort of a thing at a
12:04:08 9 place in time, but the feature of using market data is
12:04:11 10 part of a formalized or an involved compensation system.

12:04:19 11 I mean the kinds of things that I'm talking
12:04:21 12 about here on pages 5 through whatever it was, 5
12:04:24 13 through -- mostly throughout the report, really, but
12:04:27 14 that I begin to outline in pages 5 through 15.

12:04:31 15 Q. And is what you are saying that each of the
12:04:34 16 defendants had some system in place to administer
12:04:38 17 compensation?

12:04:40 18 MS. DERMODY: Object to form.

12:04:42 19 THE WITNESS: Is what I'm saying that each one
12:04:44 20 had some system? Sounded like you were saying --

12:04:55 21 MR. KIERNAN: Q. I'm trying to understand
12:04:56 22 your opinion.

12:04:57 23 A. Okay. No, no. I appreciate that.

12:04:57 24 Q. Because you set forth, in paragraphs 10 through
12:05:01 25 44, what you describe as possible features of a formal

12:05:05 1 system, and then in paragraph 45 you state that not each
12:05:09 2 defendant had all of these features.

12:05:11 3 A. Right. No, I understand now.

12:05:13 4 Q. So I'm trying to follow what you mean by formal
12:05:15 5 pay system.

12:05:16 6 A. I thought you were saying, though, the
12:05:18 7 impression that I was just saying that, well, they all
12:05:20 8 have one system or another.

12:05:23 9 They all have -- they all have features of
12:05:28 10 systems that -- and which is what I think is relevant in
12:05:31 11 this case. They have features of systems that lead me
12:05:34 12 to the second part of the assignment, which was they all
12:05:38 13 have features, including following principles of
12:05:43 14 internal equity, including using market survey -- survey
12:05:50 15 data in one way or another. They all have features that
12:05:54 16 lead me to the second conclusion in the report.

12:05:59 17 So they don't have identical systems, as we
12:06:03 18 talked about earlier, but they all have features of
12:06:05 19 those systems that would lead me to the conclusion. And
12:06:09 20 that's why I was, you know, interested in that, really.
12:06:12 21 That first point, the first part of the assignment, is
12:06:16 22 really related to the second point.

12:06:18 23 Q. Is identifying the features that leads you
12:06:23 24 to -- or that form the basis of your second opinion?

12:06:29 25 MS. DERMODY: Object to form.

12:06:30 1 THE WITNESS: I'm sorry. I didn't hear the
12:06:31 2 question. I didn't hear the first part of what you
12:06:34 3 said.

12:06:34 4 MR. KIERNAN: Q. You said the first -- the
12:06:35 5 first point, the first part of the assignment is
12:06:39 6 really related to the second point.

12:06:41 7 A. Yeah.

12:06:41 8 Q. Those were your words.

12:06:43 9 A. Yes.

12:06:44 10 Q. And what I asked was, the first part of the
12:06:48 11 assignment that's related to the second point, is that
12:06:51 12 identifying the features that forms the basis of your
12:06:55 13 second opinion?

12:06:59 14 A. Part of the -- part of the second -- I have
12:07:05 15 lots of opinions. But part of the assignment about
12:07:10 16 whether suppressing wages would lead to suppression --
12:07:16 17 whether these practices would lead to suppression of
12:07:19 18 wages in the firms is related to features of formal pay
12:07:23 19 systems.

12:07:26 20 But just having -- right. Right. I mean,
12:07:37 21 they're obviously related. This is all about
12:07:40 22 compensation.

12:07:56 23 Q. Now, you agree that with a formal pay system,
12:07:59 24 it's likely that not all people doing the same job
12:08:03 25 within a firm are all paid the same salary?

12:09:46 1 So there are people who are basically in the
12:09:47 2 same job who are -- they're not all paid the same
12:09:49 3 salary, even though that's a structure that's very
12:09:54 4 formalized. The state police -- you can imagine a state
12:09:59 5 police structure, I don't know them all, but imagine
12:10:01 6 them looking like figure 1 in this report, which is a
12:10:08 7 government pay grid.

12:10:09 8 Some school teachers with unionized contracts,
12:10:11 9 you can pick out one's wage by knowing their two axes;
12:10:15 10 years of experience and degrees. If you know those two,
12:10:19 11 you know precisely what one is paid at a given point in
12:10:23 12 time. And they're all teachers.

12:10:26 13 Q. Do you agree that the pay for an individual
12:10:28 14 will depend, in part, on how the individual manager
12:10:33 15 weighs the different factors that are relevant to the
12:10:39 16 individual's pay?

12:10:40 17 MS. DERMODY: Object to form.

12:10:45 18 THE WITNESS: Would I agree that -- I would
12:10:47 19 agree that a manager's opinions are certainly a part of
12:10:53 20 what one's pay change will be from one -- one pay time
12:10:56 21 to the next, say, every -- per year. And managers do
12:11:04 22 have some discretion over that. There is certainly --
12:11:11 23 absolutely.

12:11:12 24 MR. KIERNAN: Q. And then different
12:11:14 25 managers can exercise their discretion differently.

12:11:18 1 MS. DERMODY: Object to form.

12:11:23 2 THE WITNESS: Again, as I said in the example I
12:11:24 3 used earlier, it's a stark example, but managers can --
12:11:27 4 sometimes people do things they shouldn't be doing. So
12:11:32 5 one manager could discriminate against a worker or group
12:11:37 6 of workers. And typically in well-functioning
12:11:41 7 organizations that doesn't happen, but that can happen.

12:11:44 8 MR. KIERNAN: Q. But another alternative
12:11:46 9 or possibility is that two managers weigh the same
12:11:50 10 factors differently. Give different weight to the
12:11:52 11 same factors. Isn't that a possibility?

12:11:54 12 MS. DERMODY: Object to form.

12:12:06 13 THE WITNESS: I think -- are you asking me in
12:12:08 14 general? In general, managers make different decisions
12:12:13 15 faced with the same information. So you might be
12:12:15 16 deciding on which two products to launch, and one
12:12:18 17 manager might feel it's important to go with one and one
12:12:21 18 with another.

12:12:22 19 MR. KIERNAN: Q. I don't care about
12:12:23 20 products. I'm talking about compensation.

12:12:25 21 A. So could two managers facing the same
12:12:29 22 information make -- I think on the margins, people might
12:12:34 23 not make precisely the same decision in exactly -- in
12:12:40 24 precisely the same instance, but they're all following
12:12:45 25 an administrative formal structure and protocol.

12:12:48 1 And often there are recommended --
12:12:55 2 recommendations for how to translate pay changes. And
12:13:02 3 there is also a sort of chain of command. There is
12:13:08 4 sometimes a second look on a particular compensation
12:13:10 5 decision.

12:13:14 6 Q. And let's take Adobe. What were the factors
12:13:17 7 that managers at Adobe considered in deciding the
12:13:22 8 compensation for an individual?

12:13:25 9 A. I think Adobe -- what are the factors Adobe --
12:13:30 10 people at Adobe used. I'm just turning to Adobe here to
12:13:35 11 remind myself.

12:13:44 12 Factors included external market data, as they
12:13:46 13 did in all defendant firms. That was one factor.

12:13:49 14 Q. Your opinion is that each and every manager,
12:13:52 15 when making a compensation decision, considered external
12:13:55 16 market data?

12:13:57 17 A. I don't know what each and every manager did.

12:13:59 18 Q. How would you determine that?

12:14:01 19 A. How would I determine what each and every
12:14:03 20 manager did?

12:14:04 21 Q. Yeah.

12:14:07 22 A. I don't know how I'd do that because there are
12:14:09 23 lots of managers.

12:14:10 24 Q. How many?

12:14:14 25 A. I would --

12:14:17 1 Q. Don't guess.

12:14:18 2 A. Yeah. I don't know precisely how many managers
12:14:21 3 there are.

12:14:22 4 Q. Do you know approximately?

12:14:23 5 A. You told me not to guess.

12:14:25 6 Q. That's why I'm asking, do you know
12:14:27 7 approximately?

12:14:29 8 A. I would imagine -- well, there are a lot
12:14:34 9 because work groups can't be too big, because managers
12:14:37 10 need to be supervising a certain -- imagine a hierarchal
12:14:42 11 system. One manager might supervise a certain number of
12:14:46 12 workers, and to do that well the number of workers can't
12:14:50 13 be too large. And you can think about the size of these
12:14:53 14 organizations, number of employees, and sort of make
12:14:54 15 some calculation from that, which I -- I have -- I could
12:14:58 16 ballpark that, but I'd rather not do that.

12:15:01 17 Q. Is one of the things you could do is survey the
12:15:06 18 managers that were making the compensation decisions --

12:15:10 19 MS. DERMODY: Object to form.

12:15:11 20 MR. KIERNAN: Q. -- about the factors that
12:15:15 21 they consider?

12:15:16 22 A. You could survey anybody about anything. But I
12:15:20 23 think that that's not -- I think that's an independent
12:15:25 24 issue to what I was asked to do here. And it doesn't
12:15:33 25 really, I don't think -- I don't know where you are

12:15:34 1 going, but it doesn't impact what I view as the outcomes
12:15:38 2 of my -- of my conclusion. So --

12:15:43 3 Q. How individual managers made the compensation
12:15:46 4 decisions -- hang on -- doesn't impact your opinions in
12:15:53 5 this case?

12:15:57 6 A. If they made them at random, which I don't
12:16:01 7 suspect, it would be one thing. But the fact that
12:16:04 8 individual managers would value a particular outcome or
12:16:08 9 work effort in one way or another could have some
12:16:14 10 modification, but doesn't really change how I -- I'll
12:16:18 11 give you a specific example. I know you are asking
12:16:22 12 about Adobe, but I'll give you another example.

12:16:24 13 Imagine figure 12, which we talked about
12:16:26 14 earlier. These are merit increase measures --

12:16:36 15 (Reporter clarification.)

12:16:36 16 THE WITNESS: -- merit increase matrix
12:16:36 17 measures, and along the vertical axis are performance
12:16:38 18 ratings. And so this has a performance rating of ■■■ to
12:16:43 19 ■■■ for Google. There are others. Actually, you are
12:16:47 20 asking me about Adobe.

12:16:50 21 MR. KIERNAN: Q. Go ahead and stick with
12:16:52 22 the Google one, then we can do Adobe.

12:16:54 23 A. I think Adobe is in here too. It is. I think
12:16:57 24 it is.

12:16:58 25 So this is why I want to -- maybe I can better

12:17:02 1 answer your question. A particular manager might

12:17:06 2 give -- these are performance ratings from [REDACTED]

12:17:11 3 Q. Uh-huh.

12:17:12 4 A. I believe, with respect to these figures, that

12:17:14 5 the average was [REDACTED]. It happens to be about in the

12:17:16 6 middle of the figure, but I think it was [REDACTED].

12:17:19 7 You and I might -- both might be managers at a

12:17:22 8 particular company. You might see one of your workers

12:17:29 9 and evaluate that person as a 3.4, and I might evaluate

12:17:32 10 that person as a 3.5. So there are differences that we

12:17:39 11 were making objective and subjective evaluations. We

12:17:42 12 might have slightly different things. Probably be

12:17:45 13 pretty close. But within this structure, there might be

12:17:49 14 a slight modification there. But at the same time, I

12:17:54 15 think that the -- what I'm talking about here still

12:17:57 16 follows through, even if there is a -- certain modest

12:18:00 17 differences there.

12:18:01 18 Q. Assume that two managers give a 3.5 rating to

12:18:09 19 an employee.

12:18:10 20 A. Okay.

12:18:11 21 Q. Okay.

12:18:14 22 A. And there --

12:18:16 23 Q. Go ahead.

12:18:17 24 A. You mean two managers of the same employee, or

12:18:19 25 one manager to one employee and another manager to --

12:18:21 1 Q. Let's do it this way, and we can get more
12:18:23 2 complicated.

12:18:24 3 A. Okay.

12:18:24 4 Q. Let's start with one manager, one employee.

12:18:28 5 A. Okay.

12:18:28 6 Q. At Google.

12:18:29 7 A. All right. I'm going to open this. Sorry.
12:18:33 8 Okay.

12:18:34 9 Q. And the employee has a rating of 3.5 and
12:18:41 10 falls -- let's say falls right at a hundred percent.
12:18:47 11 Actually, let me strike that.

12:18:49 12 Explain what this document means.

12:18:52 13 A. This is -- this is Google's merit -- a Google
12:18:56 14 merit increase matrix, and I cite the original text. I
12:19:06 15 just retyped this. And what I believe this is is on the
12:19:13 16 horizontal -- sorry. On the vertical axis, that is that
12:19:17 17 first column, [REDACTED] through [REDACTED], are ratings. [REDACTED] being
12:19:22 18 low, lower, and [REDACTED] being higher. And so there are lots
12:19:30 19 of different possible ratings. And then there is what's
12:19:32 20 called the pre-adjustment position is the horizontal
12:19:36 21 axis going from [REDACTED] percent to [REDACTED] percent.

12:19:41 22 And I think you were about to say this, but
12:19:43 23 I'll say it. If one is at [REDACTED] percent, that person is in
12:19:49 24 sort of the [REDACTED] -- is [REDACTED] percent of the sort of middle
12:19:56 25 of that range. And if one is at [REDACTED], they're [REDACTED] percent

01:29:55 1 wasn't just one person, one manager, as you've been
01:29:58 2 talking, but someone else weighing in on that kind of an
01:30:03 3 issue.

01:30:03 4 Q. Was that true in each of the defendant
01:30:05 5 companies?

01:30:05 6 A. Was it true that they would have to go to a
01:30:07 7 second person to go outside of the guidelines? I don't
01:30:09 8 know. Or I can't recall those examples at all seven.

01:30:16 9 Q. You mentioned before you distinguish between
01:30:19 10 what the policy is and what the practice might be; why
01:30:23 11 were you making that distinction?

01:30:25 12 A. I was doing the policy and the practice, I
01:30:27 13 think, following the questions you were asking me before
01:30:29 14 lunch about whether, you know, the distinction -- the
01:30:34 15 discussion we had that was related to figure 12, which
01:30:36 16 we've now talked about I think in every segment, which
01:30:44 17 is what a guideline might be and what were the actual
01:30:47 18 pay ranges for each of the employees that we talked
01:30:50 19 about earlier. I was just making the distinction
01:30:54 20 because you brought it up earlier.

01:30:57 21 Q. Did each of the defendant companies use salary
01:31:00 22 ranges?

01:31:00 23 A. Did each one have new salary ranges?

01:31:05 24 Q. Use salary ranges.

01:31:08 25 A. Oh, I'd have to look. I think that -- I'm not

01:31:22 1 sure if everyone did. I'm thinking one example where
01:31:25 2 they might not have actually had a range, but had --
01:31:30 3 were basically using external market data which was
01:31:35 4 reporting ranges. So effectively, did they have a range
01:31:40 5 internally, I'm not sure everyone did, technically. But
01:31:43 6 I think they were still using these same principles.
01:31:47 7 Still using external market data.

01:31:50 8 But I can't remember if every single one had
01:31:53 9 set ranges. I certainly didn't find things like I did
01:31:56 10 for -- there is a picture I -- some data and then a
01:32:02 11 graph. I think it's figures 10 and 11. 10 is the table
01:32:08 12 and 11 is the graph from Apple, I believe. I should
01:32:11 13 check before I say that. Yeah.

01:32:20 14 So what I'm saying is I'm not sure they all had
01:32:22 15 exactly things that look like this, that have job codes
01:32:25 16 and min, mid, max. So I'm not sure that every single
01:32:31 17 one did have exactly that.

01:32:33 18 Q. For purposes of your second opinion that the
01:32:36 19 impact of compensation to some employees could lead to
01:32:40 20 impact to all or nearly all other employees, is it a
01:32:47 21 necessary feature of the formal pay system that the
01:32:52 22 company use salary ranges?

01:32:56 23 A. I think there are -- I want to think about
01:32:59 24 that. I think that there are a variety of ways --
01:33:03 25 variety of reasons where one could come to the

01:33:07 1 conclusion that restricting cold calling could have
01:33:11 2 impacts on workers. And one of those is the structure,
01:33:17 3 but another one might be something like let's say one
01:33:24 4 has a -- so no. Because I can think of -- I can think
01:33:28 5 of other examples.

01:33:29 6 Q. Like just give me examples you have in mind.

01:33:32 7 A. One example I'm thinking of just now is
01:33:36 8 something you might call -- and there is an example of
01:33:41 9 this in here, so let me just -- I'll show you the
01:33:42 10 example first and then I'll tell you so that I can get
01:33:45 11 it right.

01:33:46 12 Someone -- I think it's on the bottom of one of
01:33:49 13 my pages here. It's probably in the internal equity
01:33:58 14 section. And it's someone -- sorry. I think I can
01:34:00 15 answer the question better with a specific example.

01:34:12 16 Someone says 4 percent managing toward 3
01:34:18 17 percent, and I can't really remember where I saw it.

01:34:20 18 (Reporter clarification.)

01:34:20 19 THE WITNESS: Managing toward 3 percent. There
01:34:20 20 is an email to others. If this were searchable, I could
01:34:35 21 find it quickly. If I can't find it in ten more seconds
01:34:42 22 I'll tell the story anyway.

01:34:45 23 MR. KIERNAN: Q. Tell the story and I
01:34:46 24 could probably find it for you pretty quickly.

01:34:49 25 A. There is an email from one person, I thought --

01:34:53 1 I certainly read it, I thought I wrote about it. Where
01:34:57 2 someone said we're looking at salary increase budget of
01:35:00 3 4 percent, but we're managing it to a 3, are any of you
01:35:03 4 other companies doing things like it. Something like
01:35:05 5 that. I can't remember.

01:35:06 6 MS. DERMODY: Would you like the actual
01:35:08 7 paragraph? It's 109.

01:35:09 8 THE WITNESS: 109. I wasn't even close. Okay.
01:35:13 9 I was in the wrong section. So here it is.

01:35:16 10 So here's an example at Pixar, Ms. McAdams sent
01:35:22 11 an email to staff from Lucasfilm, among others. Quick
01:35:25 12 questions from me. For those of you who can share this
01:35:28 13 info, what is your salary increase budget for FY07?
01:35:31 14 Ours is 4 percent, but we may manage it closer to 3
01:35:34 15 percent on average. Are you doing anything close, more,
01:35:37 16 or less?

01:35:38 17 And so what I think, in this email she's doing
01:35:41 18 is, I don't know who she's writing it to, but others,
01:35:44 19 saying we're expecting to basically increase a pay -- we
01:35:52 20 have a budget of about 4 percent. They might be
01:35:54 21 actually doing it more toward 3 percent. I think that's
01:35:56 22 what she means by managing it toward 3 percent. And
01:36:01 23 let's say that you just had your salaries and you had no
01:36:07 24 structures, like the grid I talked about in figures 10
01:36:11 25 and 11.

01:36:14 1 If you were using external information like
01:36:16 2 that, then that kind of information, if those kinds of
01:36:23 3 things -- if suppression caused those numbers to be
01:36:26 4 lower, then that could be translated back to an
01:36:28 5 organization and that could propagate through.

01:36:31 6 So that's just -- an example where even in the
01:36:36 7 absence of a grid like at -- like the ones I was just
01:36:41 8 mentioning from Apple in figures 10 and 11, where this
01:36:45 9 could happen as well.

01:36:58 10 MR. KIERNAN: Q. A company -- strike that.

01:37:35 11 Can you think of any companies, as you sit here
01:37:37 12 today, that have more than 100 employees that don't have
01:37:41 13 a formalized pay system?

01:37:52 14 A. Can I think of companies -- specific companies?

01:37:55 15 Q. Yes.

01:38:17 16 A. I imagine there are many companies that have
01:38:19 17 more than a hundred employees that don't have formalized
01:38:23 18 structures in the same way I'm talking about here with
01:38:24 19 minima, maxima, multiple jobs, external market data. I
01:38:30 20 can think of many.

01:38:31 21 The first thing that occurred to me was -- I
01:38:34 22 mean, not specific companies, but examples of
01:38:37 23 organizations that would do that are small organizations
01:38:40 24 growing up. Imagine a landscaping company that's
01:38:42 25 basically paying people very short-term labor, that sort

01:38:45 1 of thing. They don't have the same kinds of formal
01:38:48 2 structures that these do.

01:38:50 3 There are lots of organizations, I imagine, but
01:38:52 4 specific ones, you know, I'd have to go in and find out,
01:38:55 5 see what they're doing, to see if they're doing this.
01:38:58 6 But I can imagine there are many.

01:39:02 7 Q. And are there degrees of formality? In other
01:39:09 8 words, you know, are some systems more formal than
01:39:14 9 others?

01:39:15 10 MS. DERMODY: Object to form.

01:39:21 11 THE WITNESS: That's an interesting question.
01:39:23 12 I think that some have -- I think more formal. That's
01:39:28 13 what I'm having trouble with, they're sort of formal or
01:39:31 14 they're not.

01:39:32 15 Some have probably more of the hallmark
01:39:34 16 features, some -- but I could imagine that there is some
01:39:42 17 gradation of that in some way, but I'm sort of thinking
01:39:46 18 of you have a formalized system or you don't.

01:39:50 19 MR. KIERNAN: Q. Maybe --

01:39:51 20 A. I should say I think as firms mature, they are
01:39:53 21 probably changing their systems until they have a
01:39:55 22 structure that's used by many leading corporations.

01:40:00 23 Q. Are there pay systems that are more rigid than
01:40:02 24 others?

01:40:03 25 MS. DERMODY: Object to form.

01:40:06 1 THE WITNESS: I don't know what -- what do you
01:40:07 2 mean -- sorry. What do you mean by "rigid"?

01:40:12 3 MR. KIERNAN: Q. That word means nothing
01:40:13 4 to you?

01:40:14 5 MS. DERMODY: Object to form.

01:40:15 6 THE WITNESS: I just -- I know what rigid
01:40:17 7 means.

01:40:18 8 MR. KIERNAN: Q. Okay. Is that a term of
01:40:21 9 art in the field of compensation? A rigid
01:40:29 10 compensation structure?

01:40:32 11 A. Rigid must be used sometimes, but I think it
01:40:35 12 could be in compensation, in HR. But whether it's -- it
01:40:42 13 could mean, with respect to this thing that you were
01:40:44 14 talking about before, how closely do you follow specific
01:40:47 15 rules. Are there -- can exceptions be made.

01:40:54 16 So can you ask the question again? I was
01:40:57 17 focusing on the definition of how you were defining
01:40:59 18 rigid when you asked it.

01:41:00 19 Q. I'm not defining -- the question was, in the
01:41:02 20 field of compensation in which you write, research,
01:41:05 21 teach --

01:41:09 22 A. Right.

01:41:10 23 Q. -- is rigid compensation system, rigid pay
01:41:14 24 system, a term of art or used to describe or categorize
01:41:17 25 certain pay systems?

01:41:19 1 A. I think the -- the term rigid could be used --
01:41:21 2 you know, I think it's like back to what you were asking
01:41:26 3 before; pay versus compensation, formal versus
01:41:29 4 structured. Rigid -- I'm just not sure about rigid.
01:41:34 5 But rigid, could probably use that in a structured
01:41:37 6 sense.

01:41:38 7 Q. Is there a generally accepted definition of
01:41:42 8 rigid or rigidity with respect to compensation
01:41:46 9 structures in your field?

01:41:49 10 A. Again, I don't know if there is some threshold
01:41:52 11 that one would cross to be called rigid versus not, so I
01:41:55 12 don't really know.

01:41:56 13 Q. Any research that you are aware of on that
01:41:58 14 issue?

01:41:58 15 A. Not that I'm aware of.

01:41:59 16 Q. Have you researched the issue?

01:42:01 17 A. Sort of definition of -- no.

01:42:05 18 Q. What does -- or what is a somewhat rigid
01:42:09 19 compensation structure?

01:42:11 20 MS. DERMODY: Object to form.

01:42:13 21 MR. KIERNAN: Q. Strike that.

01:42:15 22 Have you heard of the term "somewhat rigid
01:42:17 23 compensation structure" in the field of -- in your
01:42:21 24 field?

01:42:24 25 A. Somewhat rigid. I may have used the term

01:42:28 1 somewhat rigid pay structure. So I probably have heard
01:42:31 2 of it because I've probably written it somewhere at one
01:42:34 3 point or another.

01:42:35 4 Q. And do you recall where you would use that
01:42:37 5 term?

01:42:38 6 A. I may have used it in here, actually, but I
01:42:40 7 don't know.

01:42:47 8 Q. You don't.

01:42:48 9 A. Okay. You know, just in the sense rigid,
01:42:51 10 formalized, I think they could be synonyms in certain
01:42:54 11 applications of that. So I can't recall any specific
01:42:56 12 examples.

01:42:56 13 Q. And are there any generally accepted standards
01:43:01 14 to -- that you use to determine if a pay system or
01:43:07 15 compensation system is rigid?

01:43:12 16 A. Again, I think that that's a -- I'm thinking
01:43:16 17 about the use of rigid that an engineer would. So there
01:43:19 18 is some probably measure of rigidity. And if it's over
01:43:23 19 some scale or temperature or whatever it is, then
01:43:26 20 therefore it's rigid or not. And I don't think of that
01:43:28 21 in compensation, no.

01:43:31 22 Q. Can you think of any compensation structure
01:43:34 23 that you would consider rigid?

01:43:39 24 MS. DERMODY: Object to form.

01:43:44 25 THE WITNESS: I imagine I could think of a

01:49:50 1 things that are consistent with those. But I hadn't

01:49:52 2 thought about the scale that you are talking about.

01:49:55 3 Sort of asked are these formal systems. I think they

01:49:59 4 are. They are, and not, you know, are they.

01:50:07 5 Q. Where on the continuum are they in each of

01:50:09 6 them, not as a group?

01:50:10 7 MS. DERMODY: Object to form.

01:50:12 8 THE WITNESS: I think that these, you know, in

01:50:15 9 some sense, these systems are -- I write about in the

01:50:19 10 book, formalized -- I talk about the structures in my

01:50:26 11 book, whether I use the word structure or not. There

01:50:28 12 are other textbooks on compensation that people use for

01:50:32 13 these master's level students or undergraduate students

01:50:34 14 who are interested in human resource management.

01:50:39 15 And there are many features of the companies

01:50:40 16 that were studied here that are -- would be perfect

01:50:45 17 cases to teach those things. The use of the minimum and

01:50:50 18 the maximum and the midpoint. The using market data.

01:50:53 19 It's what's taught when one teaches about these systems.

01:50:58 20 MR. KIERNAN: Q. So take Intuit, for

01:51:01 21 example.

01:51:01 22 A. Okay.

01:51:02 23 Q. Give me the things that you would teach

01:51:04 24 about --

01:51:05 25 A. That Intuit does?

01:51:06 1 Q. Uh-huh.

01:51:07 2 A. I think that one example would be the use of
01:51:11 3 external data. I believe that -- as I believe all used
01:51:17 4 external data in one way or another. That's an example.

01:51:21 5 Q. How did Intuit use external data?

01:51:24 6 A. My guess is I have this in here, so I will
01:51:26 7 look. I think that they used -- I remember seeing
01:51:30 8 something at -- I think it's Intuit, where I think I
01:51:41 9 wrote down -- I might have written down which survey.
01:51:44 10 In some of the cases it was disclosed which company
01:51:49 11 survey was used. And let me look, because I think there
01:51:52 12 are at least two pages where I can find Intuit. The
01:51:55 13 first is here.

01:52:02 14 So here I'm actually looking. This isn't what
01:52:04 15 I was thinking of.

01:52:06 16 Q. What are you looking at, Professor Hallock?

01:52:09 17 A. I'm looking at page 27, which is in the section
01:52:14 18 on what I call Defendants had Formalized Pay Systems.

01:52:21 19 In Intuit's case, there is evidence of low, mid
01:52:24 20 and high job codes, families. There is an example of a
01:52:30 21 document listing these codes, which appear to be --
01:52:34 22 could be job codes of one type or another. And the
01:52:38 23 talent director was asked about the codes. He said he
01:52:43 24 uses this for every offer. And it suggests to me that
01:52:47 25 it's -- you got to make an offer, you go, you look, you

01:52:50 1 see how things are looking, and you make an offer.

01:52:52 2 That's kind of a formal system. They're not just saying

01:52:55 3 to the external candidates only, what is your other

01:52:57 4 salary, what were you making before, but that's an

01:53:01 5 example of a formal -- something that's associated with

01:53:05 6 these -- these kinds of systems.

01:53:09 7 Q. If you look down at paragraph 87.

01:53:13 8 A. Yep.

01:53:14 9 Q. In the last line and you are quoting

01:53:18 10 Mr. Stubblefield.

01:53:22 11 A. Uh-huh.

01:53:23 12 Q. You quote, "If we saw attrition in some area,

01:53:26 13 we'd use -- we use retention bonuses proactively to try

01:53:32 14 to secure, lock in, create incentive for other talent to

01:53:35 15 stay."

01:53:36 16 Do you see that?

01:53:37 17 A. I see that quote, yes.

01:53:39 18 Q. And is it your understanding that Intuit

01:53:44 19 managers had at their discretion the ability to pay a

01:53:48 20 bonus to retain particular individuals?

01:53:54 21 A. I'm sorry, could you say it again? I want to

01:53:56 22 know if you said policy.

01:53:58 23 Q. Is it your understanding that Intuit managers

01:54:00 24 had at their discretion the ability to pay bonus to

01:54:04 25 retain particular employees?

01:54:05 1 MS. DERMODY: Object to form.

01:54:06 2 THE WITNESS: I don't know in general, but I
01:54:07 3 know based on this quote that Mr. Stubblefield said if
01:54:10 4 we saw attrition in some area we'd use retention bonuses
01:54:18 5 proactively. So someone was using retention bonuses.

01:54:24 6 MR. KIERNAN: Q. Do you know if all
01:54:25 7 managers at Intuit had that discretion?

01:54:27 8 A. Again, I don't know what all managers had
01:54:28 9 available to them.

01:54:30 10 Q. You are using this as an example, however, that
01:54:33 11 Intuit had a formal pay system, right?

01:54:41 12 A. Well, it's in the section -- let me just make
01:54:43 13 sure -- I want to make sure I'm being careful, seeing
01:54:46 14 where I am.

01:54:47 15 I just want -- it is in the section that had
01:54:50 16 Defendants had Formalized Pay Systems. And one thing
01:54:53 17 that I think is noteworthy in that is that right above
01:55:01 18 that, Mr. Stubblefield said we tried to benchmark every
01:55:05 19 job that we can, which is -- so that's why I'm --

01:55:07 20 Q. So why did you include that sentence?

01:55:10 21 A. Benchmark --

01:55:10 22 Q. No. The sentence if we saw attrition --

01:55:13 23 A. Oh, I thought --

01:55:14 24 Q. -- we may use retention bonuses.

01:55:18 25 No, you switched gears on me. I want to focus

02:05:07 1 men -- in the study it told you where employees were
02:05:11 2 allowed to choose their mix of pay. What was the
02:05:13 3 fraction of men who chose -- what fraction did -- sorry.

02:05:20 4 Among men, what fraction chose -- I'm sorry,
02:05:26 5 I'm having trouble saying it. What was the fraction of
02:05:29 6 total pay that came in the form of salary among men.

02:05:32 7 MR. KIERNAN: Q. Oh, okay.

02:05:33 8 A. You just might want to know the number. I have
02:05:35 9 trouble articulating that. I'm sorry. And what is the
02:05:38 10 fraction among women. And it was higher among women.
02:05:43 11 And then you might want to know whether they're
02:05:45 12 specifically different or not. But it sort of depends
02:05:49 13 on what you are doing. There, it was sort of curious at
02:05:52 14 that stage of that project, very preliminary stage, you
02:05:54 15 know, is there a difference.

02:05:57 16 And so I wouldn't say in general that something
02:06:02 17 has to be significant or not. Depends on what is the
02:06:04 18 context.

02:06:10 19 Q. In using a regression to determine the impact
02:06:26 20 of some action or event, is there some rule of thumb
02:06:32 21 about the required number of observations that one would
02:06:39 22 need to provide a reliable result?

02:06:44 23 MS. DERMODY: Object to form.

02:06:45 24 THE WITNESS: Again, that's a -- you know,
02:06:47 25 there are so many --

02:06:50 1 MR. KIERNAN: Q. Could you have just two
02:06:51 2 observations?

02:06:52 3 MS. DERMODY: Object to form.

02:06:55 4 THE WITNESS: Could you ask the question with
02:06:57 5 the two observations in it?

02:06:59 6 MR. KIERNAN: Q. Yeah. If you used a
02:07:01 7 regression to estimate the impact of some action on
02:07:09 8 a -- let's say compensation, would having just two
02:07:15 9 observations be sufficient?

02:07:18 10 MS. DERMODY: Object to form.

02:07:20 11 THE WITNESS: I'm sure you -- are we
02:07:27 12 controlling for variables in this regression? Well, you
02:07:30 13 can't have more independent variables in the regression
02:07:34 14 than you have observations. So I hope that answered
02:07:38 15 the -- I can't remember what the -- which side of the
02:07:40 16 question --

02:07:41 17 MR. KIERNAN: Q. Yeah. And -- the more
02:07:44 18 observations you have, the more precision you'll
02:07:47 19 have, all things being equal, if the regression is
02:07:52 20 correctly specified?

02:08:03 21 A. You are asking me a bunch of statistical
02:08:04 22 questions, and I'm not -- I'm sort of not sure why. I
02:08:12 23 didn't do any statistics.

02:08:15 24 Q. That's the fun of the deposition.

02:08:17 25 A. Okay. Could you ask the question again.

02:08:21 1 MS. DERMODY: You are correct.

02:08:23 2 THE WITNESS: No, I....

02:08:25 3 MR. KIERNAN: Q. Yeah. I asked --

02:08:29 4 A. Well, let me try to answer the question. I
02:08:31 5 think it was about numbers of observations. I think
02:08:34 6 that given a -- given an increasing -- I think what you
02:08:40 7 are asking is whether increasing observations, generally
02:08:46 8 holding other things constant, might help improve
02:08:49 9 precision. I think that's what you are asking. And I
02:08:51 10 think that's, you know, in a general sense, that seems
02:08:53 11 reasonable.

02:09:00 12 Q. If a company has an informal pay system --
02:09:03 13 you've talked about formal pay systems, now let's talk
02:09:08 14 about a company that has an informal pay system. You
02:09:12 15 follow me? Are you with me?

02:09:16 16 A. Maybe. I don't know where -- what you are
02:09:19 17 going to say.

02:09:20 18 Q. I just want to start with the -- start the
02:09:23 19 question with the predicate that we're going to talk
02:09:25 20 about a company that has an informal pay system.

02:09:29 21 A. Okay. So not the defendants.

02:09:32 22 Q. Or anyone else that has a formal --

02:09:35 23 A. Okay.

02:09:35 24 Q. -- formalized -- what you've described as a
02:09:43 25 formalized pay system.

02:09:44 1 A. Okay.

02:09:45 2 Q. A company with an informal pay system could
02:09:47 3 decide to increase the pay across the board of all the
02:09:50 4 employees in the company; that's a -- is that a
02:09:52 5 possibility?

02:09:55 6 A. Are you asking if a company with an informal
02:09:58 7 pay system could increase the pay of everyone across the
02:10:02 8 company? Sure.

02:10:13 9 Q. Like your landscaping example. There were 30
02:10:16 10 landscapers, and they have an informal pay system. The
02:10:22 11 owner could decide I'm going to increase everybody's pay
02:10:27 12 by 10 percent.

02:10:28 13 A. I could imagine a circumstance where -- yeah.
02:10:32 14 That's an example where that could happen.

02:10:36 15 Q. And doing so doesn't make it a formal pay
02:10:38 16 system?

02:10:42 17 A. I don't think -- no. A landscaper, all of --
02:10:49 18 make sure I understand your point. A landscaper
02:10:53 19 increasing the pay of everyone in his or her landscaping
02:10:56 20 business by 10 percent doesn't imply that it's -- that
02:11:03 21 alone wouldn't imply that it's a formal pay system.

02:11:58 22 Q. Go to paragraph 188 of your report.

02:12:04 23 A. 188?

02:12:05 24 Q. Yeah. Thanks.

02:12:09 25 A. Okay. I'll try to remember which section this

02:15:05 1 Google in figure 12. There are also things that are
02:15:08 2 consistent with that, I think for Adobe, in 13. I think
02:15:12 3 perhaps for Adobe in 15, for Apple in 14, for Intel in
02:15:16 4 16.

02:15:17 5 But there are also some other kinds of things
02:15:20 6 that don't come in such a tabular way that are
02:15:23 7 consistent with those two things at the same time. This
02:15:26 8 section, as you pointed out before, is Internal Equity
02:15:29 9 and Pay for Performance Are Not Mutually Exclusive. But
02:15:33 10 there is evidence in others that it just wasn't in a
02:15:36 11 tabular form.

02:15:42 12 Q. And I've noticed I've gone back and forth
02:15:45 13 between doctor and professor; do you prefer one or the
02:15:47 14 other?

02:15:48 15 A. Call me whatever you like. Kevin is perfectly
02:15:50 16 fine.

02:15:53 17 Q. Okay. Fair enough.

02:15:54 18 So you've --

02:15:55 19 A. Don't call me Bob.

02:15:59 20 MS. DERMODY: That was that guy over there.

02:16:02 21 THE WITNESS: No offense to Bobs. I just
02:16:04 22 meant -- I thought of my brother's name, so....

02:16:11 23 MR. KIERNAN: Q. The second question that
02:16:12 24 you addressed is whether the impact on compensation
02:16:16 25 of some employees could lead to impact onto

02:16:21 1 nearly -- to all or nearly all employees of each
02:16:24 2 defendant company.

02:16:25 3 A. The second question was on the -- the first
02:16:27 4 question was on the -- the first question was on the
02:16:35 5 formalized administrative pay system and the second was
02:16:40 6 on whether suppression -- suppression of the -- you
02:16:49 7 know, the no-cold-call agreements could be -- could have
02:16:55 8 suppressive effects on wages. Yes.

02:16:58 9 Q. Okay. And I want to understand how your theory
02:17:02 10 works, and so let's start with Intel. And I want to
02:17:10 11 understand with respect to Intel, and then we can do the
02:17:14 12 other defendants since, as you noted, they do not have
02:17:17 13 identical pay systems, how an impact of some employees
02:17:22 14 at Intel could lead to an impact to all or nearly all
02:17:28 15 Intel employees.

02:17:31 16 And your opinion is not limited, as I
02:17:33 17 understand, to the technical class; is that right?

02:17:37 18 A. Um....

02:17:37 19 Q. In other words, you've reached an opinion that
02:17:39 20 all Intel employees could be impacted if some employees
02:17:45 21 at Intel were impacted?

02:17:48 22 A. That's not precisely what I said. Because you
02:17:52 23 said Intel both -- you know, what I said was that
02:18:05 24 restrictions on cold calling clearly had impacts on
02:18:08 25 employees among defendant firms.

02:18:11 1 Q. Right. Keep reading.

02:18:12 2 A. In particular, restrictions on cold calling
02:18:15 3 hamper compensation levels for employees, and the
02:18:17 4 restrictions could be expected to hamper levels of
02:18:20 5 compensation for those who would have been cold called
02:18:23 6 and for all or nearly all salaried employees of
02:18:26 7 defendant firm. So that I think is what you were
02:18:28 8 referring to.

02:18:30 9 Q. That's right.

02:18:30 10 A. I just -- you said it a little bit differently
02:18:33 11 and I just wanted to make clear that this is what I
02:18:36 12 said.

02:18:37 13 Q. Right. But -- and then later in your report
02:18:39 14 you note that you're reaching an opinion that it could
02:18:47 15 impact all or nearly all salaried employees including
02:18:50 16 the technical class.

02:18:52 17 A. That's right. There is a section I write on
02:18:54 18 the technical class. I refer to the technical class in
02:18:59 19 some parts of the report.

02:19:02 20 Q. During the time period in which you were
02:19:05 21 examining, the 2005 to 2009 period, how many employees
02:19:10 22 were at Intel?

02:19:14 23 MS. DERMODY: Object to form.

02:19:15 24 THE WITNESS: Again, I can't remember the --
02:19:17 25 I'm just guessing -- I would be guessing again. We

02:19:21 1 talked about this earlier on the size of -- I think we
02:19:23 2 talked about this earlier -- on the size of the
02:19:25 3 organizations. And they varied in terms of the number
02:19:28 4 of employees, considerably.

02:19:33 5 So I can't -- I can't tell you precisely how
02:19:38 6 big the employee base was at Intel at a particular time,
02:19:41 7 or over that time specifically.

02:19:48 8 MR. KIERNAN: Q. And with respect to
02:19:48 9 Intel, what is the basis for your opinion that an
02:19:53 10 impact to some employees could lead to an impact to
02:19:56 11 all or nearly all salaried employees of Intel?

02:20:01 12 A. There are a variety of reasons why the
02:20:10 13 restrictions on cold calling could impact -- could have
02:20:15 14 suppressive effects on wages of all or nearly all
02:20:21 15 employees.

02:20:22 16 Q. List them for me.

02:20:23 17 A. Among them are -- this is a hypothetical
02:20:33 18 example. I'm not sure if I have an example in here for
02:20:35 19 Intel. But an example might be that there is -- because
02:20:43 20 of equity concerns, if one person has pressure on her
02:20:48 21 wage it might lead to pressure on wages of the other
02:20:52 22 people in the work group.

02:20:53 23 So let's say a bunch of people are earning
02:20:57 24 \$100,000. If one person is offered a big outside offer,
02:21:03 25 and the employer matches it or at least increases their

02:21:07 1 wage, to the extent that she's in the same work group or
02:21:09 2 doing the same kinds of things, there might be pressure
02:21:11 3 to move it up. So there is one example.

02:21:14 4 Q. One example of what could happen in a
02:21:16 5 hypothetical world.

02:21:17 6 A. Absolutely. Yeah.

02:21:18 7 Q. Okay.

02:21:18 8 A. That's one example. And it happened in
02:21:20 9 these -- there is evidence of this in these firms.

02:21:24 10 Q. Okay. Stop right there.

02:21:25 11 A. Okay.

02:21:26 12 Q. For Intel, identify the example that you are
02:21:28 13 referring to.

02:21:29 14 A. Okay.

02:21:29 15 Q. Where the impact of compensation to one person
02:21:34 16 caused someone else's compensation to be raised.

02:21:40 17 A. I don't have here -- I don't know. I may have
02:21:42 18 in here of that. But I'm telling you why this is the
02:21:46 19 distinction I think you were making before. I'm asking
02:21:49 20 about could something be expected to happen and you are
02:21:52 21 asking me did it happen.

02:21:54 22 Q. What does that mean could it be expect -- I
02:21:57 23 notice in the body of your report you say nearly --
02:22:02 24 actually not nearly -- every time you write it could
02:22:06 25 happen. And then the summary opinions you say could be

02:22:10 1 expected to happen. What's the difference?

02:22:14 2 A. I think there -- I would have to look at
02:22:16 3 exactly the differences in the two passages, but these
02:22:19 4 are -- they're both talking about sort of making a
02:22:22 5 prediction about something versus what you were talking
02:22:24 6 about earlier, did something actually happen. And I
02:22:27 7 think that's a distinction we've been talking about in
02:22:29 8 many of your questions.

02:22:38 9 Q. Okay. So you are making a prediction of
02:22:40 10 whether or not it could happen?

02:22:43 11 A. I'm -- I was asked to determine whether
02:22:48 12 suppressing wages, including technical workers, were
02:22:55 13 basically predicted to lead to suppression of wages.

02:23:00 14 Q. Then in your report, you opine that it could
02:23:03 15 happen?

02:23:05 16 MS. DERMODY: Object to form.

02:23:07 17 THE WITNESS: No, I actually talk about it. I
02:23:09 18 use the same words, I think, where I say are predicted.
02:23:21 19 I'm looking on page 4, for example.

02:23:24 20 MR. KIERNAN: Q. Okay. And what do you
02:23:25 21 mean by that? They are predicted to happen -- I
02:23:30 22 mean, they are predicted to suppress the
02:23:32 23 compensation of all or nearly all members of
02:23:35 24 plaintiffs' proposed technical class?

02:23:40 25 A. I think this is what we talked about earlier.

02:23:42 1 That based on what I know about compensation, how I've
02:23:46 2 been thinking about this for the last, I don't know if
02:23:48 3 it's 22 or 24 years, that given the evidence that I have
02:23:55 4 here, having read these six feet, had access to read all
02:24:04 5 these depositions, what is -- what is the predicted
02:24:10 6 outcome.

02:24:12 7 You've talked about testing the outcome, but --
02:24:16 8 and talked about statistics and things, but that's not
02:24:18 9 what I was asked to do. I think that's an independent
02:24:21 10 question.

02:24:21 11 Q. Okay. So with respect to Intel, when you opine
02:24:30 12 that an impact to some employees, you are saying that
02:24:36 13 your opinion is that it's predicted that there would be
02:24:41 14 an impact to all or nearly all Intel employees?

02:24:45 15 A. Yeah. I -- I think -- what I'm saying is
02:24:51 16 agreements against cold calling can have -- are
02:24:58 17 predicted to have suppressive effects, or just -- I'm
02:25:01 18 using the words I'm using here so I'm not -- are
02:25:04 19 predicted to suppress the compensation.

02:25:06 20 Q. Well, you can change the words if they're not
02:25:08 21 accurate.

02:25:08 22 A. No, no, it's the same thing. I just wanted to
02:25:11 23 be clear.

02:25:12 24 Q. Predicted and could are the same thing in your
02:25:14 25 mind?

02:25:14 1 MS. DERMODY: Object to form.

02:25:15 2 THE WITNESS: No, I was using the word
02:25:17 3 suppress. I was worried about saying suppress.
02:25:18 4 Suppressive versus --

02:25:19 5 MR. KIERNAN: Q. In the sentence you said
02:25:21 6 could and then you switched to predicted. So
02:25:22 7 that's --

02:25:23 8 A. I'm just looking at this sentence now.

02:25:25 9 Q. Okay.

02:25:25 10 A. And say that the agreements against cold
02:25:27 11 calling are predicted to suppress the compensation of
02:25:31 12 all or nearly all members of the plaintiffs' proposed
02:25:35 13 technical class.

02:25:36 14 You were asking about a specific case. And
02:25:41 15 there are -- there are multiple reasons, given the way
02:25:45 16 these systems are set up, that one would -- there are
02:25:49 17 multiple reasons why one would predict the agreements
02:25:58 18 against cold calling would lead to suppression of wages.

02:26:02 19 Q. And they're all set forth in your report?

02:26:05 20 A. They are -- among them are the -- make sure
02:26:18 21 that they are all set forth in the report.

02:26:21 22 One has to do with this -- this internal equity
02:26:25 23 concerns within a group. One has to do with using
02:26:30 24 external market data. And if the external market data,
02:26:34 25 for example, this is another example, are suppressed,

02:26:40 1 bringing those back could lead to further supression.

02:26:44 2 Another example is the salary increases.

02:26:46 3 Salary increases we just talked about earlier. We
02:26:50 4 talked about a lot of things earlier, but that was one
02:26:57 5 we talked about earlier with respect to the person who
02:27:00 6 talked about the 4 percent managing to 3 percent.

02:27:03 7 Q. Let's start -- well, go back to Intel.

02:27:05 8 A. Okay.

02:27:06 9 Q. And let's take a -- do you know how many job
02:27:11 10 titles there were at Intel?

02:27:15 11 A. I can look to see. I don't know if I know how
02:27:20 12 many job titles are at Intel.

02:27:21 13 Q. Would it matter to your analysis of whether an
02:27:26 14 impact to compensation of some employees would impact --
02:27:29 15 could be predicted to impact the compensation of all or
02:27:33 16 nearly all employees?

02:27:44 17 A. Would knowing the number of job titles have an
02:27:48 18 impact on my --

02:27:50 19 Q. Your prediction.

02:27:50 20 A. -- on my prediction? No.

02:27:58 21 Q. It wouldn't?

02:28:00 22 MS. DERMODY: Object to form.

02:28:03 23 Are you arguing with him?

02:28:04 24 MR. KIERNAN: I'm not. I want to make sure I
02:28:06 25 understand his answer.

02:28:08 1 MS. DERMODY: You said, "It wouldn't?" That's
02:28:09 2 not really asking to understand, Mr. Kiernan.

02:28:13 3 MR. KIERNAN: It's beyond objection to form.
02:28:14 4 Stop coaching the witness. Stop coaching the witness.

02:28:17 5 THE WITNESS: What is the question?

02:28:18 6 MR. KIERNAN: You guys wanted that rule.

02:28:21 7 Q. My question is, it would not impact your
02:28:25 8 prediction, the number of job titles, at Intel?

02:28:31 9 MS. DERMODY: Object to form.

02:28:35 10 THE WITNESS: My prediction is that the
02:28:41 11 arrangements in this case, the anti no-cold-calling
02:28:47 12 agreements, are predicted to have suppressive effects.
02:28:54 13 And whether -- I'm making a prediction about there are
02:29:01 14 suppressive effects. I am not making a prediction
02:29:04 15 about -- yeah.

02:29:07 16 So I'm just making a prediction about
02:29:09 17 suppressive effects. So whether they're X or two times
02:29:12 18 X wouldn't change whether I predict that that would have
02:29:16 19 suppressive effect.

02:29:16 20 MR. KIERNAN: Q. But you're predicting two
02:29:19 21 effects, right? You are predicting that the
02:29:21 22 agreements would impact the people who didn't
02:29:24 23 receive a cold call because of the agreements, and
02:29:27 24 you are also predicting that it would impact all or
02:29:31 25 nearly all employees at Intel. Is that accurate?

02:55:13 1 like this where one was asked to, A, think about whether
02:55:20 2 there are formal systems and, B, think about whether
02:55:23 3 restrictions on cold calling could lead to this
02:55:30 4 suppression of compensation.

02:55:33 5 So it's not -- there aren't lots of examples of
02:55:37 6 this happening. At the same time, I'm basing this on my
02:55:40 7 knowledge of how these systems work. That's what I --

02:55:44 8 MR. KIERNAN: Q. Are you --

02:55:45 9 A. That's what I research and teach.

02:55:46 10 Q. Are you aware of any cases in which a plaintiff
02:55:50 11 or some party alleged that some conduct caused
02:55:57 12 compensation of employees to be lower than they
02:56:00 13 otherwise would have been but for the conduct?

02:56:06 14 A. I'm imagining a case -- not a specific case in
02:56:10 15 mind, but I'm imagining examples of labor market
02:56:13 16 discrimination based on gender, for example, that we
02:56:15 17 talked about earlier. If there was some sort of
02:56:18 18 culture, or whatever it is, where people were improperly
02:56:29 19 operating to impact one group versus another.

02:56:32 20 But again, I'm not -- if you are asking about
02:56:34 21 my legal experience, I talked about the three -- this is
02:56:38 22 my third deposition.

02:56:41 23 Q. Well, I asked you if there were generally
02:56:42 24 accepted procedures --

02:56:46 25 A. Yeah.

02:56:46 1 Q. -- to determine whether an impact to some
02:56:49 2 employees would impact others. Okay? And you said you
02:56:53 3 weren't aware of any and this was the first case.

02:56:56 4 A. No.

02:56:56 5 MS. DERMODY: Object to form.

02:56:58 6 THE WITNESS: No, I don't think I said that. I
02:57:00 7 said I'm using precisely those procedures, techniques
02:57:06 8 and methods that one would do to do this. I don't know
02:57:12 9 of another example exactly like this, so this is what
02:57:14 10 I -- this is what I did.

02:57:16 11 MR. KIERNAN: Q. And are there any
02:57:17 12 textbooks, treatises or articles that describe the
02:57:20 13 methodology, procedures that you used in this case
02:57:24 14 to answer the question?

02:57:26 15 A. There are many -- I cite some examples of
02:57:31 16 textbooks, or books, that use -- discuss the
02:57:39 17 compensation systems, which is really what this is
02:57:42 18 about, which is how these compensation systems are
02:57:44 19 structured. And so, in fact, one of those books is the
02:57:49 20 book that we mentioned -- that we talked about earlier
02:57:52 21 called "Pay" from 2012. Another of those is a book
02:57:59 22 called "Compensation" by three other authors.

02:58:03 23 Q. Is it your testimony that both those books set
02:58:06 24 out procedures to determine whether or not -- strike
02:58:12 25 that.

02:58:13 1 Is it your testimony that those two books set
02:58:15 2 forth procedures to determine whether employees'
02:58:22 3 compensation was impacted by some conduct?

02:58:29 4 A. No. Those textbooks describe the compensation
02:58:34 5 systems, but this is a -- this is a new example. And an
02:58:38 6 application of academic and practical work is precisely
02:58:45 7 what's required to answer the questions in the case.

02:58:47 8 Q. Are you aware of any generally accepted
02:58:49 9 procedures to determine whether some conduct or action
02:58:54 10 impacted employee compensation?

02:58:57 11 MS. DERMODY: Object to form.

02:59:04 12 THE WITNESS: Again, I -- am I aware of
02:59:09 13 procedures where some conduct impacted compensation.

02:59:14 14 MR. KIERNAN: Q. To -- just so the
02:59:16 15 question is clear --

02:59:17 16 A. I'm sorry.

02:59:17 17 Q. -- to determine whether the conduct caused an
02:59:21 18 impact to compensation of employees.

02:59:25 19 MS. DERMODY: Object to form.

02:59:31 20 THE WITNESS: Again, I think what you are
02:59:32 21 asking is the question of the testing of the impact,
02:59:36 22 trying to detect it. Is that what you are asking?
02:59:40 23 Trying to understand.

02:59:41 24 MR. KIERNAN: Q. Well, let's start with
02:59:42 25 that.

02:59:45 1 A. I mean, I think people use statistical analyses
02:59:48 2 to do those things.

02:59:49 3 Q. Do you know?

02:59:51 4 A. Do I know?

02:59:52 5 Q. Do you know? You said you think. But do you
02:59:54 6 know what the generally accepted procedures are to
02:59:58 7 determine whether some conduct impacted employee
03:00:03 8 compensation?

03:00:08 9 A. The reason I pause is because clearly
03:00:11 10 statistical techniques would be used if we're talking
03:00:20 11 about trying to measure impacts. And precisely which of
03:00:23 12 those techniques would be used would depend on precisely
03:00:28 13 what kind of situation we're talking about.

03:00:34 14 Q. And --

03:00:35 15 A. That's why I said broadly -- broadly
03:00:38 16 statistical. I would imagine statistical measures would
03:00:40 17 need to be used if one were trying to measure the
03:00:42 18 magnitude of some impact.

03:00:44 19 Q. And I'm not talking about measuring the
03:00:46 20 magnitude of some impact. I'm talking about to
03:00:49 21 determine whether there was impact. Maybe that means
03:00:52 22 the same thing to you, but I want to make sure the
03:00:55 23 record is clear.

03:00:56 24 I mean in the first instance --

03:00:59 25 A. Well I --

03:04:00 1 and '90s at the time, the -- showed that the average
03:04:09 2 effect -- the average CEO pay was higher in firms that
03:04:15 3 had made a layoff than in firms that had not. But there
03:04:18 4 are other things that are correlated with that with CEO
03:04:23 5 pay; for example, firm size.

03:04:26 6 So again, this is just a statistical study.
03:04:29 7 That study is from a long time ago. 1998. That's when
03:04:35 8 it was published.

03:04:53 9 Q. In this -- if I wanted to look for a book or an
03:04:59 10 article to find what procedures to follow to make a
03:05:07 11 prediction of whether some conduct would impact
03:05:12 12 compensation, what text or books, articles, would I go
03:05:18 13 to?

03:05:24 14 MS. DERMODY: Object to form.

03:05:25 15 THE WITNESS: In this case I used books,
03:05:26 16 including -- in this case, for the purposes of
03:05:30 17 considering the questions that were posed to me, I used
03:05:34 18 books, including my own book. And -- which I know well,
03:05:41 19 and another book by Milkovich, Gilman and Gearhart,
03:05:45 20 which is a common textbook used.

03:05:49 21 MR. KIERNAN: Q. I read them both.

03:05:52 22 A. Oh, you did.

03:05:53 23 Q. And that's why I'm asking questions. Because
03:05:54 24 I'm thinking about what chapters to look at again,
03:05:59 25 because I don't recall them, the procedures that I would

03:06:01 1 follow to -- if analyzing the question of whether
03:06:10 2 conduct -- some conduct is predicted to impact employee
03:06:19 3 compensation.

03:06:21 4 A. Again, I think that those books, and others,
03:06:23 5 describe a framework that's important for compensation
03:06:28 6 and discuss lots of issues, including formalized
03:06:33 7 compensation systems, issues like international
03:06:35 8 compensation, many other issues.

03:06:37 9 But this is a specific -- neither of those
03:06:42 10 books talks about an example of how would one consider
03:06:49 11 the impacts of no-cold-call agreements, nor do they
03:06:59 12 consider many other interesting issues in compensation.
03:07:02 13 They're books. They're talking about important aspects
03:07:05 14 of compensation, but certainly not all. There are more
03:07:10 15 books to be written.

03:07:12 16 Q. When you say that impact on compensation of
03:07:17 17 some employees is predicted to lead to impact to some --
03:07:23 18 or to all or nearly all of the technical class, what do
03:07:26 19 you mean by predicted?

03:07:29 20 A. Again, I don't say that exactly in the same
03:07:32 21 words, but I say I believe the agreements against cold
03:07:34 22 calling are predicted to suppress compensation. Maybe I
03:07:38 23 do say it, but I'm looking at another sentence.

03:07:42 24 What I mean is --

03:07:47 25 Q. Let's just -- I want to make sure that the

03:07:48 1 record is clear.

03:07:49 2 A. Okay.

03:07:50 3 Q. You pointed me to paragraph 8.h.

03:07:53 4 A. That's what I'm looking at.

03:07:55 5 Q. Right. Page 4. And you were noting to me, you

03:07:57 6 are making the distinction that you didn't only say

03:08:01 7 could or could be expected, that you went and said

03:08:04 8 predicted. So I want to know what you mean by the word

03:08:07 9 "predicted."

03:08:11 10 A. Okay. I was just trying to clarify another

03:08:13 11 point, but I can talk about predicted. Predicted is

03:08:16 12 what it is. That given my knowledge of compensation,

03:08:19 13 based on what I've written in the book, my columns,

03:08:26 14 which are trying to link compensation research and

03:08:29 15 practice, what I know about these systems, how I teach

03:08:33 16 students who then go and work in and help design these

03:08:35 17 systems, that I predict that agreements against cold

03:08:45 18 calling are predicted to suppress the compensation of

03:08:50 19 all or nearly all members of the plaintiffs' proposed

03:08:54 20 technical class. So I'm not --

03:08:56 21 Q. Including those with different job titles?

03:08:58 22 A. I'm sorry. Including those with different job

03:09:00 23 titles.

03:09:03 24 And it's my prediction. Like you said before,

03:09:07 25 I don't have data on every manager decision, every

03:09:12 1 employee decision. I am -- I'm talking about a
03:09:16 2 prediction.

03:09:29 3 Q. So define for me what you mean by "prediction."
03:09:34 4 In other words, don't assume I know what you mean,
03:09:36 5 because I don't.

03:09:41 6 Is that different from could?

03:09:51 7 A. I think "could" and "predicted" are very
03:09:54 8 similar words. But, you know, I predict this has
03:10:00 9 happened, given what I know about the structures, about
03:10:03 10 how compensation systems work, I believe that these
03:10:07 11 agreements are predicted to suppress compensation.

03:10:21 12 MS. DERMODY: You can keep going.

03:10:22 13 THE WITNESS: Maybe -- I don't know if this is
03:10:24 14 helping what you are asking, is I think I'm trying to
03:10:26 15 make a difference -- a distinction by using the word
03:10:29 16 prediction. You asked me to define or talk about
03:10:36 17 prediction. I don't have the outcome. I haven't seen
03:10:38 18 what happened. So that's what you were asking me about
03:10:40 19 before, I think, making the point. But that's
03:10:42 20 consistent with this, that I --

03:10:44 21 MR. KIERNAN: Q. I see. So you are not
03:10:46 22 saying that it would necessarily lead to the
03:10:47 23 suppression of compensation of all or nearly all
03:10:53 24 members of plaintiffs' proposed technical class?

03:10:56 25 A. I don't want to use a double negative. That's

03:10:57 1 not --

03:10:57 2 MS. DERMODY: Excuse me. Object to form.

03:10:59 3 THE WITNESS: That's not not what I was saying,

03:11:01 4 I think. I want to be clear. What I'm saying is I'm

03:11:09 5 making a prediction, and I didn't measure these things.

03:11:14 6 As I say, in fact, I say it's consistent with your

03:11:16 7 question did you have the data. I say in the same

03:11:19 8 paragraph, I think, in fact, I've not been asked to

03:11:23 9 estimate the magnitude of damages. That I predict that

03:11:27 10 the agreements against cold calling -- I believe the

03:11:31 11 agreements are predicted to suppress compensation.

03:11:36 12 So the difference between prediction and

03:11:39 13 knowing is measuring. And I wasn't asked to estimate

03:11:43 14 those things. I didn't have the -- as you said, I

03:11:46 15 didn't have information on individual pay decisions or

03:11:50 16 compensation levels for all the members of the

03:11:53 17 companies.

03:12:10 18 MR. KIERNAN: Q. So with respect to your

03:12:12 19 prediction, what level of confidence? Is it 2

03:12:19 20 percent confidence? 50 percent?

03:12:28 21 A. I'm not really sure what you mean. So this is

03:12:33 22 a prediction. I'm making a prediction. I'm not putting

03:12:37 23 precision around an estimate after I've made an

03:12:40 24 estimate, which I think you were asking about earlier, a

03:12:42 25 standard error. This is my prediction. Sort of based

03:12:44 1 on my knowledge of these systems and these structures, I
03:12:47 2 predict this.

03:13:37 3 Q. Let me hand you what's been previously marked
03:13:41 4 Horner 1250. Actually, let's go ahead and mark this
03:13:44 5 Defendants' 2, please. That's easier.

03:13:57 6 (Whereupon, Exhibit 2 was marked for
03:13:57 7 identification.)

03:14:25 8 MR. KIERNAN: Q. I'll give you a chance to
03:14:26 9 review it. Do you recognize this document?

03:14:35 10 A. I believe I've seen at least part of this,
03:14:38 11 but --

03:14:39 12 Q. If you go to paragraph 113.

03:14:41 13 A. I was going to say, I'd like to look to see
03:14:43 14 where I referenced it. Is this Adobe?

03:15:06 15 Yes. I'm referencing this on page 34 of my
03:15:10 16 report. Looks like, to me.

03:15:20 17 Q. I notice here you cite to the deposition of
03:15:23 18 Digby Horner that references [REDACTED] And this, I'll
03:15:27 19 represent to you, is the exhibit that he was being
03:15:29 20 questioned about.

03:15:31 21 Did you review this exhibit when you were
03:15:34 22 writing this paragraph?

03:15:37 23 A. Yeah.

03:15:39 24 Q. Okay.

03:15:40 25 A. Well, in the sense that I may have actually

03:15:43 1 written down this quote, and then typed the quote in. I
03:15:48 2 might not have been reviewing it at that point.

03:15:51 3 Q. Sure. Fair enough.

03:15:52 4 A. For some of these I wrote them directly from --
03:15:57 5 from the exhibits, and from some I was writing from
03:15:59 6 notes. But the note process was taking too long and I
03:16:03 7 switched.

03:16:05 8 Q. Okay. So [REDACTED] works at Adobe; is that your
03:16:10 9 understanding?

03:16:11 10 A. I'd have to look back at it again.

03:16:35 11 It looks like it, because this looks to be --
03:16:38 12 I'm assuming this is emails among employees from Adobe
03:16:42 13 talking about [REDACTED]. And it says a no-brainer to
03:16:46 14 retain [REDACTED] so I'm assuming that he was there at the
03:16:48 15 time. But I'm not -- you know, that looks like it from
03:16:51 16 what I've read, based on that. Okay.

03:16:54 17 Q. Right. And according to this email, [REDACTED]
03:17:01 18 got a raise after they learned that he'd interviewed
03:17:07 19 with four companies, and he also noted that his college
03:17:11 20 friends were making \$15,000 more per year than he is.
03:17:15 21 Is that your understanding?

03:17:25 22 A. I'm not sure -- I don't know about the college
03:17:27 23 friends.

03:17:28 24 Q. If you go to page 2.

03:17:29 25 A. Okay. Okay. He has college friends that work

03:25:31 1 MR. KIERNAN: Q. Now you are using could.

03:25:32 2 I understand anything could happen.

03:25:34 3 A. Okay.

03:25:37 4 Q. I could get hit right now by a meteor. What I
03:25:40 5 want to focus on is what you are predicting. Your
03:25:44 6 opinion is because of a formalized pay system at Adobe,
03:25:48 7 that an impact on compensation of some employees is
03:25:52 8 predicted to lead to an impact on compensation of all or
03:25:56 9 nearly all technical class employees.

03:26:00 10 So looking at [REDACTED], using the same job
03:26:04 11 title of all these other people, what's your prediction?

03:26:10 12 MS. DERMODY: Object to form.

03:26:12 13 THE WITNESS: I'd want to think about that more
03:26:14 14 carefully and know more about these individuals. I
03:26:17 15 think, again, this example is a subset. In fact, I
03:26:20 16 called out this example because it -- it discusses
03:26:24 17 principles of internal equity. I think that's why I was
03:26:29 18 doing it in this section. Yeah.

03:26:32 19 And individual instances of this, again, I
03:26:34 20 haven't looked at the individual instances. But if
03:26:37 21 there are -- if there is wage suppression in the market
03:26:40 22 data that can have translative effects -- if that's a
03:26:46 23 word, I'm sorry -- if that can translate into
03:26:49 24 suppression throughout the system.

03:26:54 25 MR. KIERNAN: Q. What do you understand

03:26:55 1 would be the but-for world?

03:26:58 2 MS. DERMODY: Object to form.

03:26:59 3 THE WITNESS: I'm not sure what you mean by the
03:27:01 4 but-for world.

03:27:02 5 MR. KIERNAN: Q. Not familiar with that
03:27:03 6 term?

03:27:04 7 A. I am, sort of. I think you mean the
03:27:06 8 counterfactual. Is that what you mean?

03:27:09 9 Q. Yeah. So with Adobe, in the but-for -- who did
03:27:13 10 Adobe have an alleged agreement with?

03:27:15 11 MS. DERMODY: Object to form.

03:27:18 12 THE WITNESS: I think what you mean is the
03:27:20 13 but-for world is in the world where there are no
03:27:23 14 agreements.

03:27:23 15 MR. KIERNAN: Q. Right. Although my last
03:27:26 16 question is who -- which company did plaintiffs
03:27:32 17 allege Adobe had an agreement that restricted cold
03:27:37 18 calling?

03:27:37 19 A. I can't remember the details of who Adobe had
03:27:40 20 an agreement with.

03:27:42 21 Q. Okay. Does it matter to your analysis?

03:27:44 22 A. That doesn't matter to the -- to the
03:27:47 23 conclusion.

03:27:49 24 Q. Does it matter how many cold calls Adobe would
03:27:55 25 have received from that company in the but-for world?

03:28:06 1 A. There are two things there. My prediction is,
03:28:12 2 again, that in the presence of the cold calling
03:28:16 3 agreements, there were suppressive effects. That I
03:28:20 4 would predict there to be suppressive effects on wages.
03:28:25 5 And you're asking about the frequency of the cold
03:28:29 6 calling? Just trying to --

03:28:32 7 Q. I'm asking you whether the frequency of the
03:28:35 8 cold calling would impact your opinion.

03:28:37 9 A. The frequency of the cold calling in what way?

03:28:44 10 Q. The -- how would it impact your opinion, if at
03:28:46 11 all?

03:28:47 12 A. The frequency of cold calling at Adobe or among
03:28:49 13 all defendant firms or cold calling in general?

03:28:53 14 Q. No, no, between Adobe -- I'm only talking about
03:28:55 15 Adobe and the other company.

03:28:59 16 A. Adobe and the other company?

03:29:01 17 Q. (Nonverbal response.)

03:29:02 18 A. Which other company?

03:29:03 19 Q. That's what I asked you and you didn't know.

03:29:07 20 A. No, I'm sorry. I'm confused and I want to make
03:29:10 21 sure I understand your question correctly. So could you
03:29:12 22 start over.

03:29:13 23 I'm not asking if you are talking -- I'm
03:29:16 24 wondering if you are talking about a defendant firm or
03:29:19 25 another firm that's not a defendant firm.

03:29:21 1 Q. I'm asking about the agreement that plaintiffs
03:29:24 2 are challenging in this case that Adobe had with another
03:29:28 3 company. Do you know who that company is?

03:29:32 4 MS. DERMODY: Object to form.

03:29:35 5 THE WITNESS: I said earlier I don't know
03:29:37 6 specifically what Adobe's agreement -- who Adobe had
03:29:40 7 agreements with.

03:29:42 8 MR. KIERNAN: Q. To move this along,
03:29:45 9 plaintiffs allege it was Apple. All right?

03:29:47 10 A. Okay.

03:29:47 11 Q. Would it matter to your opinion, the frequency
03:29:49 12 of the cold calls, between Adobe and Apple -- that would
03:29:55 13 have occurred in the but-for world between Adobe and
03:29:58 14 Apple?

03:30:00 15 A. I want to make sure I understand what would
03:30:02 16 have happened in the but-for world. Are you saying
03:30:05 17 would it matter to my opinion the difference between the
03:30:11 18 cold calls that happened during the agreements, which
03:30:13 19 let's assume is zero, and how many were happening in the
03:30:18 20 absence of the agreements, which is some number greater
03:30:21 21 than zero.

03:30:21 22 Q. Well, maybe.

03:30:32 23 A. That -- that frequency -- I mean, clearly, you
03:30:39 24 know, I'm operating under the assumption that the
03:30:43 25 agreements were in place to stop something, which was

03:30:46 1 the cold calling. And so stopping cold calling -- as I
03:30:51 2 said before, stopping cold calling -- the agreements
03:30:57 3 against cold calling, stopping cold calling, are
03:30:59 4 predicted to suppress the compensation. But remember
03:31:04 5 it's a prediction and not a measurement.

03:31:08 6 So that frequency, if it was X or 2X, I still
03:31:15 7 would make the same prediction if it were, say, X or 2X.
03:31:19 8 I think that's what you were asking. If it was a lot or
03:31:22 9 a super lot, X or 2X, I still have the same prediction.

03:31:28 10 Q. Okay. In a world in which the agreement wasn't
03:31:31 11 in place.

03:31:34 12 A. Okay.

03:31:34 13 Q. So there is no --

03:31:37 14 A. Agreements.

03:31:37 15 Q. -- agreement between Adobe and Apple.

03:31:41 16 A. Right.

03:31:41 17 Q. So an Adobe employee, in that but-for world,
03:31:43 18 gets a cold call from Apple --

03:31:50 19 A. Yes.

03:31:51 20 Q. -- negotiates higher pay --

03:31:52 21 A. With?

03:31:53 22 Q. -- with Adobe.

03:31:54 23 A. So Apple calls into Adobe, the Adobe employee
03:31:58 24 uses that information to negotiate a higher wage
03:32:02 25 internal to Adobe.

03:32:04 1 Q. (Nonverbal response.)

03:32:04 2 A. Okay.

03:32:05 3 Q. And you understand that's the but-for world
03:32:07 4 that plaintiffs are alleging?

03:32:13 5 MS. DERMODY: Object to form.

03:32:20 6 THE WITNESS: Again, I'm not sure what you mean
03:32:22 7 by the plaintiffs are alleging. I'm responding to these
03:32:26 8 questions, so I don't know about -- there is many
03:32:28 9 aspects of this case that I'm not party to.

03:32:31 10 MR. KIERNAN: Q. Okay.

03:32:32 11 A. So I don't want to comment on something that --

03:32:34 12 Q. Fair enough. So let's focus on the but-for
03:32:36 13 world as I just defined it. There is no agreement
03:32:40 14 between Adobe and Apple. Adobe employee gets a raise
03:32:43 15 after a cold call from Apple.

03:32:45 16 A. Okay. I thought you were talking about this.

03:32:48 17 Q. Follow me?

03:32:49 18 A. An Adobe employee gets a raise after a cold
03:32:52 19 call from Apple. Comes in, negotiates a higher wage.
03:32:55 20 Yes.

03:32:56 21 Q. Right. Would you predict that that raise would
03:33:03 22 then lead to a raise to all or nearly all technical
03:33:09 23 employees?

03:33:12 24 A. I wouldn't necessarily predict that that alone
03:33:16 25 would do that. That's why I said that that kind of

03:36:04 1 don't know these specific workers, what they're doing.
03:36:08 2 Imagine a worker, two people are working side by side --
03:36:11 3 five people are working side by side, they're all doing
03:36:14 4 roughly the same work, they're all paid roughly the same
03:36:17 5 way. One of them gets a cold call, that person's wage
03:36:23 6 increases. There is -- principles of internal equity
03:36:27 7 would suggest that there is upward pressure on the
03:36:30 8 others.

03:36:30 9 Q. I know. But you are talking about a
03:36:32 10 hypothetical. I'm talking about real life.

03:36:34 11 MS. DERMODY: Object to form.

03:36:36 12 MR. KIERNAN: Q. So let's focus on the
03:36:37 13 real life example. [REDACTED], he interviewed with
03:36:42 14 four firms, he's gone back to his manager with
03:36:44 15 information about his college buddies, and he's
03:36:48 16 negotiated a [REDACTED] increase in pay to his salary.

03:36:54 17 A. Right.

03:36:54 18 Q. How could that lead to an impact to even
03:36:59 19 people -- just the people in his own job title?

03:37:02 20 MS. DERMODY: Just one moment. So this is the
03:37:04 21 fifth time you've asked the same question, and we're
03:37:06 22 going to need to move on after this.

03:37:10 23 THE WITNESS: I think that, again, I don't know
03:37:12 24 those specific people.

03:37:14 25 MR. KIERNAN: Q. You would need to know

03:37:14 1 that?

03:37:17 2 A. No. I wouldn't have to know the people. But I
03:37:19 3 do --

03:37:20 4 Q. What would you need to know to make the
03:37:22 5 prediction that the other people within the same job
03:37:25 6 title --

03:37:26 7 A. An example.

03:37:26 8 Q. -- hang on -- would impact their compensation?
03:37:29 9 What are the things you would need to know to make that
03:37:31 10 prediction?

03:37:54 11 A. I would want to know what kind of work they're
03:37:56 12 doing. How they're doing, among other things. I
03:38:02 13 haven't thought about that. The reason you -- the
03:38:04 14 reason I'm reluctant to talk about a specific example is
03:38:07 15 I think that the fact that it's not -- this specific
03:38:12 16 example, I don't know that worker group, I don't know
03:38:14 17 that particular -- you know, I knew this is an example
03:38:19 18 of internal equity, that's why I talked about it.

03:38:21 19 But it's -- really what happens in that
03:38:24 20 particular work group is not -- what happens there -- my
03:38:33 21 results are not dependent on what happened in that work
03:38:37 22 group because there are other avenues for my predictions
03:38:43 23 or my -- my conclusions in my report.

03:38:48 24 Q. And what are those other conditions that would
03:38:52 25 lead you to the prediction about [REDACTED] impact on

03:38:55 1 anybody else?

03:38:58 2 A. I -- the report doesn't talk about that. What
03:39:00 3 the report talks about is there are suppressive -- that
03:39:07 4 the no-cold-calling agreements -- restrictions on
03:39:10 5 cold-calling agreements could be -- sorry. Wrong page.

03:39:15 6 That the restrictions against cold calling,
03:39:18 7 such as those at issue in the case, are predicted to
03:39:23 8 suppress compensation. And the reason I say that there
03:39:26 9 are multiple things here is that even independent of the
03:39:31 10 example, or an example like you talked about, there are
03:39:34 11 other reasons, including those I -- including some I've
03:39:39 12 mentioned earlier for that conclusion.

03:39:47 13 Q. Can you point to any examples of that happening
03:39:53 14 where an impact to compensation of all or nearly all of
03:39:57 15 the technical class members occurred because of changes
03:40:01 16 to some employees' compensation?

03:40:04 17 A. I didn't -- again, as you -- as you said this
03:40:09 18 morning, I didn't -- I don't have the decisions on the
03:40:12 19 individual managers or the data on what their
03:40:15 20 compensation -- individual compensation level was, so I
03:40:17 21 can't point to -- I'm talking about this idea based on
03:40:22 22 the knowledge of the compensation systems, not on the
03:40:25 23 outcome, not on estimating -- making an estimate of the
03:40:30 24 magnitude of the damages.

03:40:34 25 Q. Well, I'm not talking about the estimation of

03:40:36 1 damages. I'm talking about your prediction of impact.

03:40:44 2 MS. DERMODY: I'm sorry, is there a question
03:40:46 3 pending?

03:40:48 4 MR. KIERNAN: Q. Do you have an example of
03:40:49 5 where the compensation of all or nearly all
03:40:53 6 technical class members were impacted because of an
03:40:57 7 impact to the compensation of some employees?

03:41:02 8 MS. DERMODY: Object to form.

03:41:04 9 THE WITNESS: Do I have an example where that
03:41:05 10 happened?

03:41:07 11 MR. KIERNAN: Q. Correct.

03:41:09 12 A. I can't think of an example of what you are
03:41:12 13 describing. But again, that, I think, like this
03:41:16 14 example, is I understand what you are saying, that's
03:41:20 15 independent of the conclusions. This is really based on
03:41:23 16 my knowledge of the structure, my knowledge of
03:41:26 17 compensation systems, the research in practical world,
03:41:31 18 and the fact that these agreements are predicted to
03:41:35 19 suppress compensation.

03:41:42 20 Q. Okay. Do you have an opinion as to whether, as
03:41:48 21 suppression of compensation to some employees because of
03:41:51 22 the agreements, would have affected all or nearly all
03:41:54 23 class employees?

03:41:55 24 A. I'm sorry, could you say --

03:41:59 25 Q. Do you have an opinion --

03:42:00 1 A. I'm sorry.

03:42:00 2 Q. Do you have an opinion of whether a suppression
03:42:06 3 of compensation to some employees would have affected
03:42:12 4 all or nearly all technical class employees?

03:42:16 5 A. I'm trying to decide what you mean by would
03:42:19 6 have, whether that -- what you are trying to say is what
03:42:22 7 I'm saying. Is that given what I know about this, that
03:42:26 8 I'm predicting this outcome. I'm wondering by saying
03:42:28 9 "would have," if you are talking about something that
03:42:31 10 actually happened, which is the measurement of the data
03:42:32 11 again. So I'm just trying to understand the question.

03:42:35 12 I think what you are saying is what I'm saying,
03:42:36 13 which is that I believe the agreements are predicted to
03:42:42 14 suppress compensation. So I know I believe that, but I
03:42:45 15 just want to make sure, so --

03:42:47 16 Q. Let me ask it like this.

03:42:49 17 A. Okay.

03:42:50 18 Q. Have you formed an opinion that suppression of
03:42:53 19 compensation for some employees would necessarily lead
03:42:58 20 to the suppression of compensation of all or nearly all
03:43:01 21 technical class employees?

03:43:10 22 A. I don't think you could say that as universal
03:43:12 23 truth because there are some employees, I don't know,
03:43:15 24 CEO, for example, where if there is something happened
03:43:18 25 to -- you know, sounded like you were talking about a

03:43:21 1 very general statement.

03:43:24 2 Q. I was focusing on the technical class
03:43:25 3 employees.

03:43:26 4 A. Okay. Then could you say it again? Because
03:43:28 5 I -- I went off on a....

03:43:30 6 Q. I'm actually focusing on -- let's just go back
03:43:33 7 to 8.h.

03:43:35 8 A. 8.h. Okay. Page 4.

03:43:43 9 Q. Right. You state your opinion is, "I believe
03:43:45 10 that the agreements against cold calling, such as the
03:43:48 11 agreements at issue in this case, are predicted to
03:43:50 12 suppress the compensation of all or nearly all members
03:43:53 13 of plaintiffs' proposed technical class."

03:43:56 14 A. Right.

03:43:57 15 Q. Have you reached an opinion that the agreements
03:44:02 16 against cold calling would necessarily suppress the
03:44:04 17 compensation of all or nearly all members of plaintiffs'
03:44:07 18 proposed technical employee class?

03:44:10 19 A. Would necessarily suppress the compensation; is
03:44:12 20 that what you are asking?

03:44:13 21 Q. Correct.

03:44:14 22 A. I'm just a little bit unsure because those
03:44:17 23 aren't terms I would use. So I'm not -- or maybe I have
03:44:22 24 used terms -- what -- I mean, I use a lot of terms.
03:44:26 25 I've written a lot of words.

03:49:32 1 Q. I'd like to. You know why? Because here we
03:49:36 2 have people's salaries, and we have the performance
03:49:40 3 levels, we have the job codes, we have all the things
03:49:43 4 that you talk about that make a formalized pay system.
03:49:46 5 So I think -- I'd like you to take me through with this
03:49:49 6 specific example.

03:49:51 7 A. Again, I'm nervous about this specific example
03:49:54 8 because I don't know these folks. So I don't want to be
03:49:56 9 talking about a specific example, but I will do my best
03:49:58 10 to answer your question.

03:49:59 11 Q. Would that matter, though? Is that why you
03:50:01 12 keep clarifying that?

03:50:03 13 A. I was afraid what you were asking that I was --
03:50:06 14 I was being asked about a specific work group. So I
03:50:09 15 wanted to -- I didn't know if you had something in mind
03:50:12 16 with a specific group of workers. I just wanted to be
03:50:15 17 clear.

03:50:16 18 So let me talk about -- you asked about other
03:50:21 19 reasons why it might come to these conclusions. One is
03:50:24 20 the immediate, there -- if person X doesn't get the job
03:50:32 21 offer, there is less upward pressure on the wages of the
03:50:35 22 work crew, if they're doing similar work. Because
03:50:38 23 people -- there is this idea of internal equity. We
03:50:41 24 want to -- excuse me -- workers doing a similar work
03:50:47 25 similarly. Another is --

03:50:49 1 Q. So let's stop there and look at the example in
03:50:52 2 front of you.

03:50:53 3 A. Okay.

03:50:53 4 Q. So [REDACTED] --

03:50:55 5 MS. DERMODY: Just note you cut him off from
03:50:56 6 answering, so you might have a challenge getting the
03:50:59 7 whole answer out if you do that.

03:51:01 8 MR. KIERNAN: Okay.

03:51:02 9 Q. So [REDACTED] doesn't get the [REDACTED] bump. And
03:51:09 10 you're predicting -- you would predict that these other
03:51:12 11 employees here now wouldn't get some bump because
03:51:17 12 [REDACTED] didn't get the bump. Is that what you are
03:51:19 13 saying?

03:51:20 14 A. In example of internal equity concerns is
03:51:23 15 that -- related to internal equity concerns is the idea
03:51:27 16 that people doing similar work would be paid similarly.

03:51:31 17 Q. So let's look here.

03:51:32 18 A. Well, again, I don't know if they're doing
03:51:34 19 similar work, but let's assume that they are. So that
03:51:37 20 if one didn't get a raise, there would be less upward
03:51:40 21 pressure on others in the work group than if the person
03:51:43 22 did get a raise. I think that's what you've been asking
03:51:46 23 me.

03:51:47 24 I think you were making that as a general
03:51:50 25 argument that that alone led to paragraph h. And I'm

03:51:52 1 saying there are other reasons -- I really thought that
03:51:56 2 that's what you were driving toward. That a cold call
03:51:59 3 into a particular person would necessarily lead to the
03:52:02 4 conclusion. And that's not the only reason that would
03:52:05 5 lead to the conclusion, and that was why I said there
03:52:08 6 are these other features that I wanted to talk about.

03:52:10 7 Q. Right. And that's what I want you to talk
03:52:12 8 about.

03:52:12 9 A. Okay.

03:52:13 10 Q. Okay.

03:52:13 11 A. But then I thought you stopped me to go here
03:52:16 12 again. So let me give you one other example.

03:52:19 13 One would be imagine the salary surveys which
03:52:29 14 we didn't really talk about. There are two types of
03:52:31 15 data you could get from the external market. One is
03:52:33 16 salary survey data. So what are you paying workers in
03:52:37 17 the market. I go through a more complicated example in
03:52:40 18 figures 2, 3, 4, 5 and 6. It's a little bit more of
03:52:45 19 the -- but, you know, it doesn't have to be that way
03:52:48 20 necessarily as an example where external market data are
03:52:52 21 brought into the internal market.

03:52:54 22 And if there is suppression of wages in the
03:52:58 23 external market, or anywhere, then those wages that a
03:53:05 24 company looks at to see what competitors are paying are
03:53:13 25 necessarily lower. So there is another avenue.

03:53:17 1 (Reporter clarification.)

03:53:19 2 THE WITNESS: Are necessarily lower. I'm
03:53:19 3 sorry.

03:53:19 4 Another avenue has to do with salary
03:53:23 5 increase -- or budget increases, which is the example I
03:53:27 6 talked about earlier. And I don't know if we ever found
03:53:32 7 it. I think it was 160-something, someone said that we
03:53:38 8 looked at. Maybe you directed me to it. And this is
03:53:41 9 the second one. No, that's not it. I don't know where
03:53:44 10 it is.

03:53:45 11 Where if it were the case that there is a
03:53:48 12 massive -- doesn't have to be massive. Any -- if it's
03:53:52 13 the case that because there is less competition for
03:53:59 14 wages, that the raises the people are expecting next
03:54:02 15 year are lower than the raises if -- to the extent that
03:54:06 16 firms are using external market data on what raises will
03:54:10 17 be, if raises are lower because there is less
03:54:13 18 competition in the market, then that's another
03:54:18 19 propagating effect.

03:54:20 20 So there are multiple reasons that we've talked
03:54:22 21 about. Including those related to internal equity,
03:54:25 22 including multiple uses of external market data.

03:54:29 23 So again, based on that knowledge of this,
03:54:32 24 using external market data, all defendants use external
03:54:35 25 market data, I come to the conclusion that we talked

03:54:39 1 about. The agreements against cold calling are
03:54:41 2 predicted to suppress compensation.

03:54:57 3 MS. DERMODY: If you're at a convenient break
03:54:59 4 point, David, we've been going over an hour.

03:55:02 5 MR. KIERNAN: This is fine. This is fine.

03:55:09 6 THE VIDEOGRAPHER: We're going off the record
03:55:11 7 at 3:55 p.m.

03:55:13 8 (Recess taken.)

04:17:47 9 THE VIDEOGRAPHER: We're back on the record at
04:17:50 10 4:17 p.m.

04:18:12 11 MR. KIERNAN: Q. Okay. Can you turn to
04:18:14 12 paragraph 194 of your report. That's on page 58.
04:18:33 13 Okay.

04:18:34 14 You state here, "In the instance of this case,
04:18:36 15 the defendant firms limited the market for the employees
04:18:39 16 by restricting cold calling. This clearly led to what
04:18:43 17 would otherwise be higher levels of compensation for
04:18:45 18 some of those in the firms, except that the restrictions
04:18:49 19 were in place."

04:18:52 20 Do you see that?

04:18:55 21 A. I do. On page 58, yeah.

04:18:58 22 Q. What's the basis for your statement that the
04:19:02 23 agreements being challenged by the plaintiffs clearly
04:19:06 24 led to what otherwise would be higher levels of
04:19:10 25 compensation for some of those in the firms except that

04:19:13 1 the restrictions were in place?

04:19:19 2 A. That -- well, it's related to what we were
04:19:22 3 talking about before. One example would be that -- two
04:19:27 4 things that occur to me right away, and we can talk
04:19:29 5 about others. One is that restricting cold calling, in
04:19:34 6 the example I can't remember the name that we talked
04:19:35 7 about before the break, you've talked about the example
04:19:40 8 where in the absence of the -- the cold calling
04:19:45 9 restrictions, the person's wage would not have been
04:19:47 10 raised by \$20,000, so that's an example.

04:19:50 11 I think we're talking into the area we were
04:19:53 12 talking about earlier, though, whether it happened or is
04:19:56 13 a prediction to happen. But I also was thinking about
04:19:59 14 what comes right before that. The statement from the
04:20:04 15 court, I think that's -- yeah. The question presented
04:20:07 16 in this case is not whether defendants'
04:20:09 17 anti-solicitation agreements had any impact on
04:20:12 18 employees, defendants concede that some employees may
04:20:14 19 have been impacted.

04:20:16 20 And then goes on to say and admit -- and I
04:20:19 21 admit at the start we are not saying that nobody was
04:20:22 22 impacted. So, you know, a combination of those things,
04:20:26 23 it's just sort of related to the same ideas.

04:20:30 24 Q. And what I'm trying to understand is are you
04:20:32 25 saying here that you are predicting that because of the

04:20:37 1 agreement, some people would have been impacted, are you
04:20:40 2 saying that they were, in fact, impacted?

04:20:49 3 A. In this -- I think really what I'm intending
04:20:54 4 here is that this is -- this is a little bit narrower
04:21:00 5 than the things we were talking about before.

04:21:03 6 Q. Correct.

04:21:04 7 A. This is, you know, in reference to the quote
04:21:06 8 above where the court said it's not that they -- it's
04:21:09 9 not whether the anti-solicitation agreements or what
04:21:12 10 we've been calling no-cold-call agreements had any
04:21:16 11 impact, that the defendants concede. So I was sort of
04:21:19 12 saying, well, there is concession. This is consistent
04:21:22 13 whether there is concession that some people --

04:21:26 14 Q. It says the concession is may have been
04:21:28 15 impacted, not that they were impacted. You see that?

04:21:31 16 A. I see that part. And then the part beyond it
04:21:33 17 says and I admit at the start we are not saying that
04:21:36 18 nobody was impacted.

04:21:37 19 Q. Right.

04:21:37 20 A. So I wasn't necessarily referring to that part,
04:21:39 21 but that paragraph 193.

04:21:41 22 Q. Independent of relying on those statements that
04:21:45 23 you just pointed out in 193, have you independently
04:21:50 24 determined whether any employee at any of the seven
04:21:54 25 companies was impacted by the agreements?

04:30:37 1 support specialist would lead to suppression of
04:30:50 2 compensation of all or nearly all the technical class
04:30:53 3 members across job titles within the technical class.

04:30:58 4 A. It doesn't have to. So that's what we talked
04:31:00 5 about before. That there could be -- there are various
04:31:04 6 avenues by which -- by which the anti no-cold-call --
04:31:11 7 the anti -- I don't want to use a double negative.
04:31:15 8 There are various avenues by which the no-cold-call
04:31:18 9 agreements can lead to -- or the agreements against cold
04:31:23 10 calling can lead to suppression of compensation, and
04:31:28 11 they don't have to.

04:31:30 12 And this really is, I think, what we were
04:31:32 13 talking about right before the break. They don't -- it
04:31:35 14 doesn't have to be by that avenue.

04:31:37 15 Q. By which avenue?

04:31:38 16 A. By the avenue of the absence of a cold call to
04:31:42 17 a particular member of that job title and that company.

04:31:51 18 Q. Okay. But it has to start with someone not
04:31:54 19 getting a cold call, right?

04:31:56 20 A. Absolutely.

04:31:56 21 Q. Okay.

04:31:57 22 A. But you were asking how it would happen in that
04:31:59 23 case, and I don't know whether or not someone in that
04:32:02 24 case was being cold called. But I'll talk about, again,
04:32:07 25 I think what you are asking is that there are a variety

04:32:10 1 of reasons you were asking me, prior to the break,
04:32:15 2 reasons for how it is that cold call agreements --
04:32:30 3 restrictions on cold calling would predict the
04:32:32 4 compensation, and we talked about those varieties. And
04:32:35 5 one of those was the issue of internal equity in the
04:32:39 6 simple job group, which would be you could use the
04:32:42 7 analogy in this group, although I haven't studied this
04:32:45 8 group in particular, I don't have the data as we've
04:32:49 9 talked about.

04:32:50 10 And others could be these issues that have to
04:32:51 11 do with how the structure is set up and the market
04:32:55 12 survey data. And the market survey data, with the
04:32:57 13 variety of the uses of the market data, are -- include
04:33:02 14 suppressed wages that can lead to suppression elsewhere.
04:33:08 15 That's what we talked about right before we broke.

04:33:11 16 Q. Did you examine whether the market data that
04:33:16 17 you're referring to included suppressed wages?

04:33:24 18 A. Again, I don't have wages of individual
04:33:26 19 workers. I'm talking about a prediction based on what I
04:33:28 20 know about the structures and the systems.

04:33:30 21 Q. If you could just answer my question. The
04:33:32 22 question was, did you examine the market data to
04:33:35 23 determine if it included suppressed wages?

04:33:39 24 MS. DERMODY: Object to form.

04:33:43 25 THE WITNESS: I saw some market data, but I

04:33:45 1 didn't examine. And again, it's impossible to -- I
04:33:48 2 think what you are asking is did I see cases where there
04:33:52 3 was suppressed wages because a cold call didn't happen.
04:33:54 4 But I don't know if a cold call would have happened in
04:33:56 5 that place, so I don't --

04:34:01 6 MR. KIERNAN: Q. That's not what I asked
04:34:02 7 at all. I'm asking you did you determine or did you
04:34:05 8 examine whether the market data, to use your words,
04:34:09 9 included suppressed wages?

04:34:12 10 MS. DERMODY: Object to form.

04:34:13 11 THE WITNESS: I think -- I'm sorry, because I
04:34:16 12 think that's what I was answering. And I --

04:34:20 13 MR. KIERNAN: Q. Well, it's yes or no.

04:34:22 14 A. Oh, okay.

04:34:23 15 Q. You either examined it or you didn't.

04:34:25 16 A. I'm sorry. Did I examine market data that
04:34:27 17 included suppressed wages. I didn't have -- I had some
04:34:30 18 market data, but I don't know if the market data, you
04:34:35 19 know, had suppressed wages or not in those instances --

04:34:41 20 Q. Do you know --

04:34:41 21 A. -- because we're talking about this but-for
04:34:43 22 world.

04:34:44 23 Q. Right. Now, you mentioned -- and I'm still
04:34:49 24 confused because you are talking about these various
04:34:52 25 avenues.

04:36:01 1 Q. Okay.

04:36:01 2 A. So we'll assume we have suppressed wages for
04:36:04 3 some employees.

04:36:04 4 Q. Okay. And taking the next step --

04:36:07 5 A. Okay.

04:36:07 6 Q. -- of how other employees within the same job
04:36:11 7 title are impacted.

04:36:13 8 A. Okay. So I'll use an example of -- let me just
04:36:18 9 use a completely hypothetical example of exactly this.

04:36:21 10 Let's say that we have people who are probably not
04:36:28 11 carpenters. Let's use an occupation of carpenters.

04:36:33 12 Q. Let's use -- can we use this case that you
04:36:35 13 actually studied?

04:36:36 14 A. Sure, let's use engineer IIs, which is an
04:36:39 15 example I actually write down in my example.

04:36:41 16 Q. Well, that's from your book, right?

04:36:44 17 A. Sure.

04:36:44 18 Q. No. I want to use someone from Intel.

04:36:46 19 A. Okay. Let's use an example of an engineer of a
04:36:49 20 particular type. I don't know what the particular types
04:36:51 21 are, but let's use an engineer.

04:36:53 22 Q. Why don't we use the IT support specialist.

04:36:57 23 A. Okay. Let's use -- again, I don't want to use
04:37:03 24 a specific example of a particular -- well, it doesn't
04:37:06 25 matter. Let's use any occupation.

04:37:09 1 If they're -- if it is the case that an
04:37:13 2 employer -- employers use external data. Here is an
04:37:18 3 avenue. We've talked about multiple avenues.

04:37:22 4 Q. So that we're not here all day I want you to
04:37:24 5 focus on Intel.

04:37:25 6 A. We'll use Intel.

04:37:26 7 Q. Please. Intel IT support specialist. That
04:37:32 8 employee, or some group of employees, wages are
04:37:34 9 suppressed because of the agreements.

04:37:36 10 MS. DERMODY: Object to form.

04:37:37 11 MR. KIERNAN: Q. Walk me through how that
04:37:40 12 impact -- that suppression spreads through all
04:37:45 13 35,000 employees in the technical class at Intel.

04:37:48 14 MS. DERMODY: Object to form.

04:37:49 15 THE WITNESS: Again, that's not what I'm
04:37:50 16 saying. I'm saying that there are a variety of ways
04:37:53 17 that the -- there are multiple avenues. We've talked
04:37:57 18 about three. I'll talk about them again. One of the
04:38:01 19 avenues is if -- if I am an employer and I use market
04:38:07 20 data, even on a particular occupation -- it could be on
04:38:09 21 a structure, but on a particular occupation -- and those
04:38:12 22 data are suppressed, and I use those data to think about
04:38:17 23 how to compensate people within my organization, then
04:38:23 24 there can be transmission of that suppression. That's a
04:38:25 25 particular example.

04:38:27 1 MR. KIERNAN: Q. That's a theoretical,
04:38:28 2 hypothetical example. Now, focusing on --

04:38:31 3 MS. DERMODY: Object to form.

04:38:34 4 MR. KIERNAN: Q. -- Intel and Intel's
04:38:37 5 formalized pay systems that you write about, and
04:38:38 6 that you say because of the formalized pay systems
04:38:42 7 you can predict that impact -- that suppression of
04:38:49 8 some employees within the technical class will lead
04:38:51 9 to suppression of all 35,000 technical employees. I
04:38:54 10 want to know how that works.

04:38:58 11 A. I think the things that I'm saying are
04:39:02 12 consistent. And you keep moving back to a particular
04:39:05 13 example, and I don't think it really matters. In that
04:39:08 14 example, the wages that I'm -- the data that I'm using
04:39:12 15 to think about what I'm doing internally are suppressed,
04:39:16 16 and therefore, any wage that I link with that is
04:39:20 17 suppressed. That's one.

04:39:21 18 Let me tell you the other one, which might be
04:39:23 19 more -- any wage that I'm relying on for those data.
04:39:27 20 Another one is the increase survey which I said.
04:39:31 21 Imagine again, let's say it's the case in a particular
04:39:36 22 employee, particular company, that we have a set of
04:39:41 23 compensation, and the market raise next year would be 6
04:39:47 24 percent if there were no agreements.

04:39:51 25 If there are agreements, it's going to be

04:39:52 1 less -- it would be less than 6 percent. That's a
04:39:55 2 logical conclusion. There is less pressure on wages.
04:39:58 3 The external market has -- instead of 6 percent it's a
04:40:02 4 number less than 6 percent. And let's say, then, that
04:40:05 5 you propagate that, take a number, not six but a smaller
04:40:09 6 number, and propagate that, raise everyone -- everyone's
04:40:13 7 wage will be increased by less.

04:40:15 8 That one -- that -- so that's the third example
04:40:20 9 of how I think that this -- I believe that the
04:40:24 10 agreements are predicted to suppress compensation.

04:40:29 11 Q. And can you give a specific example for any
04:40:32 12 defendant? You are struggling with Intel.

04:40:37 13 MS. DERMODY: Objection.

04:40:37 14 MR. KIERNAN: Q. Can you choose another
04:40:38 15 defendant where you can walk me through their
04:40:41 16 specific formalized pay system --

04:40:43 17 A. I don't think I'm struggling with any
04:40:44 18 defendant. I think what I said applies to all
04:40:47 19 defendants. I said the agreements against cold calling,
04:40:49 20 such as the agreements at issue in this case, are
04:40:54 21 predicted to suppress the compensation. And it -- it's
04:41:00 22 the same thing. I mean, I -- that's true of all -- of
04:41:04 23 all defendants.

04:41:07 24 I was just worried because you were talking
04:41:09 25 about specific examples or specific people or something,

04:41:11 1 and it doesn't have to be. Particularly in that last
04:41:15 2 case.

04:41:17 3 Q. Well, the defendants, as you said before, do
04:41:20 4 not have identical pay structures or pay systems.

04:41:24 5 A. That's right.

04:41:25 6 Q. And they may use market data differently.

04:41:29 7 MS. DERMODY: Object to form.

04:41:35 8 THE WITNESS: I don't know that I said they'd
04:41:38 9 use market data differently, but there are only so many
04:41:41 10 ways to use market data. And since all employers -- all
04:41:46 11 seven defendant employers use market data, there are
04:41:51 12 only so many ways you can use market data. And either
04:41:54 13 way, ways one would use market data are certainly
04:41:58 14 consistent with this idea.

04:41:59 15 So I think the fact that they don't have
04:42:01 16 identical systems isn't -- doesn't impact my conclusion.

04:42:16 17 MR. KIERNAN: Q. So assuming there are
04:42:18 18 suppressed wages for some IT support specialists at
04:42:21 19 Intel.

04:42:22 20 A. Okay.

04:42:22 21 Q. Follow me?

04:42:24 22 A. So there's --

04:42:25 23 Q. What avenues --

04:42:27 24 A. I'm sorry. So you are saying they're
04:42:28 25 suppressed because of the cold calling agreements?

04:42:34 1 Q. Yes.

04:42:34 2 A. Okay.

04:42:35 3 Q. Would that make a difference to your analysis?

04:42:36 4 A. No, I just want to make sure I'm answering the

04:42:39 5 question carefully.

04:42:40 6 Q. So assuming suppressed wages for some IT

04:42:43 7 support specialists at Intel --

04:42:45 8 A. I shouldn't say that, what I said. Because I

04:42:49 9 asked the question about something you were about to ask

04:42:53 10 a question about. So it might have an impact, but I

04:42:55 11 don't think it will. You were just saying the wages

04:42:57 12 were suppressed.

04:43:00 13 Q. Assuming suppressed wages for some IT support

04:43:02 14 specialist at Intel.

04:43:03 15 A. Right.

04:43:05 16 Q. Which avenues that you've identified would lead

04:43:11 17 to or could be predicted to suppress the wages of the

04:43:15 18 other IT support specialists?

04:43:18 19 MS. DERMODY: Object to form.

04:43:29 20 THE WITNESS: Well, one of them is the one that

04:43:31 21 we talked about earlier. Immediately I think that the

04:43:34 22 internal equity within the group. And what I'm -- so

04:43:40 23 there is one example.

04:43:43 24 MR. KIERNAN: Q. Right. And would the

04:43:45 25 internal equity -- okay.

04:45:16 1 I think that what the struggle here is you are asking
04:45:19 2 about a narrow slice. I think what you are trying to do
04:45:24 3 is ask me about, you know, given this specific thing
04:45:29 4 happened, how could you lead to these other things.

04:45:31 5 And you are talking about a hypothetical
04:45:34 6 example. I'm talking about given what I know about
04:45:36 7 these structures, there are a variety of avenues. So
04:45:39 8 it's not just because A happened that B had to happen,
04:45:43 9 because it could have been other things that led to B.
04:45:48 10 So it might not have been an impact on those workers, it
04:45:53 11 might have been some impact somewhere else. And that's
04:45:55 12 why there are these multiple -- that's why I keep coming
04:45:58 13 back to the multiple avenues and why I'm struggling with
04:46:01 14 this specific case versus the general case.

04:46:02 15 I'm not trying to be -- sort of evade that,
04:46:05 16 it's just that you are trying to translate a specific
04:46:10 17 question -- you are saying, jeez, given this specific
04:46:14 18 question, there is this general conclusion, and I'm
04:46:16 19 saying I'm not. My conclusions come from something more
04:46:19 20 than a specific example.

04:46:35 21 Q. If -- did Intel have separate salary ranges for
04:46:41 22 each of its job titles?

04:46:50 23 A. I wonder if I can speak to that directly.

04:46:54 24 Q. Let's do it this way.

04:46:55 25 A. Okay.

04:46:56 1 Q. I'll just do it in a hypothetical.

04:46:57 2 A. That would be easier.

04:46:59 3 Q. Much easier.

04:47:00 4 So assume that for each job title at Intel
04:47:03 5 there is a separate salary range.

04:47:06 6 A. Okay.

04:47:07 7 Q. And salary range, what I mean is what we talked
04:47:10 8 about this morning, min, mid, max.

04:47:14 9 A. Okay. So for each job title at Intel where --
04:47:18 10 you are making the assumption that for each job title at
04:47:21 11 Intel you have a min, mid, max.

04:47:26 12 Q. And the midpoint of each job title -- or the
04:47:28 13 midpoint of each salary range of each job title is based
04:47:33 14 on market data for that specific job title. That's part
04:47:39 15 of the hypothetical. Are you following me so far?

04:47:42 16 A. I think, let me -- I just want to make sure I'm
04:47:44 17 following you. Intel, a salary range, min, mid, max for
04:47:53 18 every job title, and that the mid is based on market
04:47:55 19 data of some type.

04:48:00 20 Q. Right.

04:48:00 21 A. Okay.

04:48:00 22 Q. Market data that is pegged to that specific job
04:48:03 23 title.

04:48:03 24 A. Okay.

04:48:06 25 Q. If the suppressed wages are in the market data

04:48:09 1 for the IT specialist, how would that affect the
04:48:16 2 compensation of another job title in the technical
04:48:20 3 class, like the yield engineers?

04:48:23 4 A. Right. It doesn't -- again, this is an
04:48:26 5 example -- sorry to say, but it's an example just like
04:48:29 6 we went through before the break, and the previous bit
04:48:34 7 of time here. That doesn't have to be the propagation
04:48:40 8 mechanism. That's -- you are narrowing the idea into
04:48:43 9 one of the multiple ways this can happen. One way you
04:48:48 10 would use data. But there are other ways you would use
04:48:51 11 market data that would lead to the conclusion that
04:48:57 12 agreements against cold calling are predicted to
04:49:02 13 suppress compensation.

04:49:03 14 So it doesn't necessarily have to be that
04:49:05 15 particular avenue. I realize it's a hypothetical, but
04:49:09 16 there are multiple avenues and there could be another.

04:49:12 17 Q. Okay. Given the assumptions of the
04:49:14 18 hypothetical I gave you --

04:49:18 19 A. Yes.

04:49:20 20 Q. -- would the use of the market data in that way
04:49:24 21 necessarily lead to -- where the suppression of wages
04:49:28 22 and market data for IT specialists lead to an impact on
04:49:34 23 the compensation for an entirely different job title?

04:49:43 24 A. In that question I think you are referring to
04:49:45 25 something we talked about before. So could you say it

04:49:47 1 again? Because I only heard --

04:49:49 2 Q. I'm referring to the same hypothetical where
04:49:51 3 the salary range -- there is a separate salary range for
04:49:55 4 each job title at Intel.

04:49:57 5 A. Okay.

04:49:58 6 Q. And they get different market data for each of
04:50:02 7 those salary ranges, right?

04:50:04 8 A. Okay. So separate midpoint for each job title.

04:50:09 9 Q. Correct.

04:50:09 10 A. Yes.

04:50:11 11 Q. If there's suppression of wages in the market
04:50:15 12 data for the IT specialist --

04:50:20 13 A. Which is one occupation.

04:50:21 14 Q. One occupation.

04:50:23 15 -- would the -- I guess what avenues, then,
04:50:26 16 would cause an impact in the effect of the other job
04:50:30 17 titles?

04:50:32 18 A. Again, I think that your example is specific to
04:50:35 19 talking about -- I'm sorry, I had my hands over -- that
04:50:42 20 there are other ways where you could -- as I described
04:50:47 21 earlier in the example -- where even if you had what you
04:50:51 22 are describing, which is market data by occupation, and
04:50:57 23 you're talking about suppression in occupation A and you
04:51:01 24 are asking how did that lead to suppression in
04:51:04 25 occupation B.

04:51:04 1 Q. Correct.

04:51:05 2 A. So I can't remember the name. Call them A and
04:51:07 3 B.

04:51:07 4 Q. No, no, you're --

04:51:09 5 A. It doesn't have to transmit that way. There
04:51:11 6 are other ways. There are three avenues that we've
04:51:15 7 talked about, at least, so far today that we could --
04:51:19 8 what could happen. You are talking about suppression in
04:51:22 9 one occupation into another, but it could be -- there
04:51:25 10 could be other avenues that that could do.

04:51:27 11 Q. List those for me.

04:51:29 12 A. Yes.

04:51:29 13 Q. Going title to title.

04:51:30 14 A. Here's the example. It's the example we just
04:51:33 15 talked about where we have workers, we have them in
04:51:38 16 their jobs, they all have a salary, let's just say we're
04:51:43 17 talking about salary, and we're thinking about what the
04:51:45 18 raise is going to be next year. And if raises next year
04:51:49 19 are smaller because of suppression, can we use market
04:51:55 20 data to help determ- -- think about raises, then the
04:52:00 21 suppression that leads to a smaller raise in the market
04:52:03 22 can lead back to suppression. That's another example.

04:52:06 23 I think that's -- the problem is that you are
04:52:08 24 trying to talk about specific cases, and there are
04:52:13 25 multiple mechanisms that lead me to the conclusion that

04:52:16 1 if you restrict cold calling, there is the prediction of
04:52:29 2 a suppression of compensation. Yeah.

04:52:34 3 Q. You just talked about the overall budget being
04:52:37 4 suppressed; is that following your avenue?

04:52:42 5 A. I didn't say the overall budget. I was talking
04:52:45 6 about a number you might get from the market based on
04:52:47 7 what salary predictions or expectations might be. But
04:52:51 8 not -- I didn't say the word budget.

04:53:05 9 Q. Okay. Did Intel use the market data in the way
04:53:07 10 that you just described?

04:53:13 11 A. Intel used market data. I can't remember, but
04:53:16 12 I'll look here to see. There are seven defendants, lots
04:53:21 13 of documents. I'll try to look to see -- there are two
04:53:24 14 places I could look quickly -- well, there are probably
04:53:27 15 more than two. But right off the top of my head, I'm
04:53:30 16 not sure exactly how they use market data.

04:53:32 17 I do know that Intel used market data because
04:53:36 18 all defendants used data of some sort from the market.
04:53:39 19 But I can look if you -- I'm happy to look.

04:53:42 20 Q. If they didn't use it in the way that you just
04:53:45 21 described, how would suppression of compensation in one
04:53:51 22 job title transmit to suppression of compensation in
04:53:56 23 another job title?

04:53:57 24 A. You know, there are other avenues, like we
04:53:59 25 talked about before, where internal equity concerns

04:54:01 1 where one job title -- again, there -- again, we've
04:54:04 2 talked about at least three. I'm counting.

04:54:07 3 One other avenue would be issues of internal
04:54:10 4 equity. Where even people who are doing different kinds
04:54:15 5 of jobs could be in related levels and so on. So
04:54:23 6 suppression in one, because of equity concerns, could be
04:54:25 7 suppression of others. I'm thinking of an example might
04:54:28 8 be a head of one group or a head of another group, where
04:54:32 9 if you want all heads to be the same because of some
04:54:34 10 culture or something in the organization, that that
04:54:36 11 could propagate that way as well.

04:54:40 12 So it's back to the internal equity concern
04:54:42 13 that we talked about before the break in what you called
04:54:45 14 Exhibit 2. It might not be exactly people in that
04:54:49 15 occupation -- occupation wasn't the word you used -- job
04:54:51 16 title -- could be in related job titles where internal
04:54:55 17 equity concerns could matter as well.

04:54:57 18 Q. And is that how we can use Intel -- is that how
04:55:02 19 Intel applied internal equity if it applied across job
04:55:05 20 titles as you just described?

04:55:07 21 A. I don't know in particular. I do know that
04:55:10 22 Intel followed principles of internal equity, but I'm
04:55:12 23 not sure if they did in precisely the way I just
04:55:16 24 mentioned. I'd have to look. I can look at my
04:55:20 25 internal -- see if I have sort of evidence of that if

04:55:22 1 you want me to try to find it in here. So I don't know
04:55:27 2 in particular if they did that in that specific way.

04:55:30 3 Q. But isn't it necessary for your prediction that
04:55:35 4 suppression of wages in one job title would spread to
04:55:37 5 all other job titles?

04:55:40 6 MS. DERMODY: Object to form.

04:55:43 7 THE WITNESS: My prediction about -- I don't
04:55:45 8 make a prediction about that prediction.

04:55:47 9 MR. KIERNAN: Q. Which prediction?

04:55:49 10 A. I don't make a -- I don't make that specific
04:55:51 11 prediction that you did, although it's consistent with
04:55:53 12 my big -- my overall prediction. But I don't -- again,
04:55:58 13 it's not necessary to have any one of these particular
04:56:03 14 avenues. There are multiple avenues that lead to the
04:56:06 15 prediction. And they're all fundamentally based on
04:56:11 16 multiple issues here, one of which is formalized
04:56:16 17 structures and pay systems.

04:56:18 18 And another is principles of internal equity,
04:56:21 19 uses of market data, and others that we've been talking
04:56:25 20 about today.

04:56:31 21 Q. Okay. Focusing on Apple for a minute.

04:56:45 22 A. Apple?

04:56:45 23 Q. Yes.

04:56:47 24 A. Okay.

04:56:48 25 Q. Which features of the -- their compensation

04:56:54 1 system leads you to the prediction that suppression of
04:57:02 2 compensation of an employee with one job title would
04:57:06 3 necessarily result in an impact to other employees in
04:57:10 4 entirely different job titles?

04:57:11 5 A. Was the first word you said bear -- or not the
04:57:14 6 first word, but an early word? I just didn't --

04:57:17 7 Q. I said focusing on Apple, which features of its
04:57:22 8 compensation system leads you to the prediction that
04:57:25 9 suppression of compensation of an employee with one job
04:57:29 10 title would lead to an impact to other employees in
04:57:34 11 entirely different job titles?

04:57:39 12 A. I think it seems to me that that's the same
04:57:41 13 question that you just asked about the previous company.
04:57:44 14 And I'm not sure that I say that.

04:57:47 15 I don't say that one in one job title leads to
04:57:50 16 another in another job title because there are multiple
04:57:52 17 avenues. So again, I think what you are saying is you
04:57:55 18 are giving a hypothetical example of a particular thing
04:57:58 19 that happened and how does that lead to the general
04:58:00 20 conclusion. And that's not -- that's not what I did.
04:58:05 21 And it's not necessary that that happened for there to
04:58:08 22 be -- to lead me to the conclusion that the
04:58:12 23 suppression -- or sorry, that the existence of
04:58:18 24 no-cold-calling agreements led to suppression of wages.
04:58:23 25 My prediction. I meant to say prediction.

05:01:43 1 the same; is that right? It didn't require that
05:01:47 2 everyone be paid exactly the same that were doing the
05:01:50 3 same job?

05:01:51 4 A. No.

05:01:54 5 Q. And it didn't mean that people would move in
05:01:56 6 lock step?

05:01:59 7 A. No. Internal equity. No.

05:02:03 8 Q. And consistent with internal equity, if someone
05:02:06 9 were more valuable, a manager may decide to pay them
05:02:10 10 more based upon their performance.

05:02:17 11 A. I think if someone is more valuable and one is
05:02:20 12 paid more is sort of the issue of the relationship of
05:02:23 13 performance and pay. And I think you said something
05:02:26 14 about that that's consistent with internal equity. The
05:02:29 15 issue of equity requires more than one person, and so I
05:02:34 16 wouldn't put those two together because you were talking
05:02:36 17 about one person. And that equity, I think by
05:02:41 18 definition, requires more than one.

05:02:44 19 Q. Under what conditions would internal equity
05:02:49 20 require a manager at any of the companies to raise the
05:02:56 21 pay of other employees?

05:03:04 22 A. Wondering about the word "require." And --

05:03:09 23 Q. Well, let me ask you -- that's a good point --

05:03:11 24 A. Okay.

05:03:12 25 Q. -- so strike the question.

05:03:16 1 A. Okay.

05:03:16 2 Q. Do you have an opinion that because of
05:03:18 3 principles of internal equity, managers were required to
05:03:22 4 increase the pay of some employees because they increase
05:03:27 5 the pay of other employees?

05:03:29 6 MS. DERMODY: Object to form.

05:03:33 7 THE WITNESS: Do you mean at that time? So
05:03:34 8 when one person gets an increase, then we're immediately
05:03:38 9 going to give everyone the increase?

05:03:40 10 MR. KIERNAN: Q. Or at any time.

05:03:42 11 A. Well, I think these issues of equity don't --
05:03:45 12 aren't immediately resolved. They might work over time,
05:03:47 13 as we talking about in I think figure -- figures 12, 13,
05:03:55 14 14, 15 and 16. I should check that. I shouldn't just
05:04:01 15 say that, but I'm pretty sure. Yeah.

05:04:03 16 Q. The salary matrices?

05:04:05 17 A. Yeah. One is -- no, those aren't salary
05:04:07 18 matrices, those are the -- where one -- where one axis
05:04:11 19 was performance and another was position and range. The
05:04:17 20 salary matrices were a separate issue. So I was meaning
05:04:22 21 12 through 16. Those are sort of consistent with equity
05:04:30 22 as an example.

05:04:31 23 Q. Okay. And how long does it take for the issues
05:04:36 24 of internal equity to be solved, as you put it?

05:04:42 25 MS. DERMODY: Object to form.

05:04:43 1 THE WITNESS: You know, I think that it could
05:04:46 2 depend. I think that sometimes very rapidly, and
05:04:50 3 sometimes, as is the suggestion in these examples, that
05:04:55 4 companies are cognizant. And every defendant, they're
05:04:58 5 following principles of internal equity. Figures 12,
05:05:03 6 13, 14, 15 and 16 I think there are consistent with that
05:05:08 7 in an explicit way.

05:05:09 8 There are lots of other examples in here. But
05:05:11 9 those are examples where organizations are concerned
05:05:15 10 with that where it's not immediately resolved. And it
05:05:19 11 could take some time.

05:05:23 12 MR. KIERNAN: Q. Using Adobe, since we had
05:05:35 13 an example of someone getting a raise. If someone
05:05:40 14 gets a raise because of a cold call at Adobe --

05:05:45 15 A. Is this the example of the [REDACTED] that we've
05:05:47 16 been talking about?

05:05:48 17 Q. Let's just use -- I'm not going to use names.

05:05:51 18 A. Okay.

05:05:52 19 Q. Employee A gets a raise because of a cold call.

05:05:54 20 A. Okay.

05:05:59 21 Q. Due to issues of internal equity at Adobe being
05:06:05 22 considered by individual managers, how long would it
05:06:08 23 take for someone else's compensation to be impacted?

05:06:14 24 MS. DERMODY: Object to form.

05:06:18 25 THE WITNESS: I don't -- that's a specific -- I

05:06:20 1 think it would depend.

05:06:22 2 MR. KIERNAN: Q. Would it impact anyone
05:06:24 3 else's compensation?

05:06:25 4 A. Again, as I said, it -- there are various
05:06:30 5 avenues by which this propagation can happen.

05:06:35 6 Q. Just focusing on internal equity. That's all I
05:06:37 7 want to focus on.

05:06:39 8 A. Okay.

05:06:39 9 Q. So one individual --

05:06:40 10 A. Sure. Sometimes -- there are certainly
05:06:41 11 examples -- you could think of examples -- your
05:06:44 12 hypothetical example. Let's say company A in a work --
05:06:47 13 sorry, employee A in a work group, say there are two
05:06:51 14 people doing that job. And that person -- they're both
05:06:55 15 doing very similar jobs. Internal equity, if that -- if
05:07:00 16 one gets a raise because of a cold call, it's certainly
05:07:03 17 possible, because of internal equity that another person
05:07:05 18 would get a raise immediately.

05:07:07 19 Q. It's also possible that it wouldn't happen,
05:07:11 20 right?

05:07:11 21 A. It's -- internal equity concerns would suggest
05:07:14 22 that there is pressure on the other person. It is a
05:07:17 23 possibility that it not happen, yes. That it not happen
05:07:20 24 immediately.

05:07:21 25 Q. Or that it wouldn't happen at all?

05:09:47 1 MR. KIERNAN: Q. So for example, take your
05:09:52 2 hypothetical, or [REDACTED], for that matter. He's a
05:09:59 3 high-impact employee being paid less than some lower
05:10:02 4 performing employees. He gets a raise. What
05:10:07 5 pressure would that have on the lower employee --
05:10:11 6 the lower performing employees?

05:10:15 7 A. Anytime there are people who are -- humans who
05:10:21 8 are working in a group together, there are comparisons
05:10:24 9 made across them. So people are, I think, frequently
05:10:28 10 making comparisons. There is large literatures about
05:10:33 11 inequality and related things where people compare
05:10:37 12 themselves to others.

05:10:39 13 And I think that when -- even if you can
05:10:46 14 imagine a work group, or even if people aren't doing the
05:10:49 15 same kind of job, if they hear other people are getting
05:10:53 16 wages, if they're in similar kinds of things, they
05:10:56 17 might sort of -- there's extra pressure. There is new
05:11:00 18 information about wages increasing and internal equity
05:11:01 19 concerns, and that hypothetical example could certainly
05:11:03 20 lead to other people asking more, negotiating more, or
05:11:06 21 having more information that they might be more valuable
05:11:09 22 than they thought.

05:11:12 23 Q. But it doesn't necessarily lead to an impact to
05:11:15 24 those other people?

05:11:16 25 A. Again, I agree that that particular case or

05:11:19 1 that example, that doesn't -- doesn't have to, though,
05:11:23 2 for my conclusions, because of the multiple avenues that
05:11:26 3 we've talked about in this last sort of -- since our
05:11:29 4 last break. That it doesn't necessarily have to be the
05:11:32 5 case, for one thing, for that example to have this
05:11:37 6 mechanism that -- I'm trying to use the same language.

05:11:41 7 That it doesn't have to be the case for that
05:11:45 8 hypothetical example to lead to suppression of
05:11:51 9 compensation. It just has to -- but that's a possible
05:11:55 10 mechanism. But there are others.

05:11:57 11 Q. But one of the mechanisms would have to operate
05:12:03 12 for there to be widespread impact, correct?

05:12:14 13 A. Certainly --

05:12:15 14 Q. There has got to be at least one.

05:12:17 15 A. There has got to be a mechanism that leads to
05:12:19 16 it, yeah. Absolutely. And as we've talked about, we've
05:12:22 17 talked about at least three of them in the last segment.

05:12:25 18 MR. KIERNAN: Okay.

05:12:26 19 THE VIDEOGRAPHER: We're going off the record
05:12:27 20 at 5:12 p.m.

05:12:28 21 This marks the end of tape No. 3 in the
05:12:31 22 deposition of Kevin Hallock.

05:12:41 23 (Recess taken.)

05:35:17 24 THE VIDEOGRAPHER: We're back on the record at
05:35:18 25 5:35 p.m.

05:35:19 1 This marks the start of tape No. 4.

05:35:28 2 MR. KIERNAN: Q. You mentioned before the
05:35:29 3 break, Dr. Hallock, that although I wasn't following
05:35:36 4 it, these were the questions where I asked about how
05:35:40 5 market data may impact other employees. Not the
05:35:48 6 market data used for the salary ranges. You know,
05:35:51 7 we had that discussion. And then you mentioned that
05:35:54 8 there was other market data that could impact
05:36:00 9 compensation. And I mentioned the word budget, and
05:36:03 10 you said, well, I'm not talking about budgets.

05:36:05 11 So what were you referring to -- do I have you
05:36:09 12 reoriented?

05:36:10 13 A. Yes. I remember the budget, and I thought you
05:36:11 14 were referring to asking me a question about budgets and
05:36:14 15 I didn't think I said budget, so I remember that. I
05:36:17 16 think you were asking about other uses of market data.
05:36:23 17 And I think that's what you were asking.

05:36:27 18 Q. Yes. Yes. So market data, not the market data
05:36:30 19 that was used to construct the salary ranges for each
05:36:34 20 job title. We --

05:36:36 21 A. Right.

05:36:37 22 Q. We talked about that. I've got your answers on
05:36:39 23 that.

05:36:39 24 A. Yes.

05:36:41 25 Q. Is it your opinion that there was other market

05:36:43 1 data being used by one or all of the defendants that
05:36:48 2 would be an avenue that would lead to suppression of
05:37:00 3 compensation of some employees to spread to all or
05:37:04 4 nearly all of the technical class?

05:37:10 5 A. I'm sorry, can you read the beginning part of
05:37:12 6 the question or say it again.

05:37:15 7 Q. Yeah. Was there -- was other market data being
05:37:19 8 used by one or all the defendants that would be an
05:37:23 9 avenue that would lead to suppression of compensation
05:37:26 10 that spread to all or nearly all the technical class?

05:37:32 11 A. Yes, I can give you a specific example of that
05:37:35 12 that I have in my mind, if you will just give me one
05:37:39 13 second.

05:37:40 14 I can give you a general example or I can give
05:37:41 15 you a specific example. Let me find the specific
05:37:45 16 example to start. I don't know how quickly I can find
05:37:53 17 it. I'm thinking it is at 130-ish. No.

05:38:05 18 This is an example where someone is asking
05:38:09 19 someone else -- writing to -- I think we talked about
05:38:12 20 this earlier, and that's why I'm trying to find it,
05:38:14 21 where someone said 3 -- 4 percent, but we're managing it
05:38:18 22 closer to 3 percent.

05:38:21 23 Q. 109.

05:38:23 24 A. What is it?

05:38:23 25 Q. 109.

05:38:24 1 A. 109. Okay.

05:38:25 2 Q. It may be.

05:38:31 3 A. Yeah. Perfect. Thank you.

05:38:32 4 So this is from Pixar. Pixar considered salary
05:38:38 5 increase budgets in considering changes to its
05:38:43 6 compensation system. So there is an email where
05:38:45 7 Ms. McAdams writes, quick question from me to others at
05:38:51 8 other companies. For those of you who can share this
05:38:53 9 information -- sorry. Let me say what she wrote.

05:38:56 10 "Quick questions from me. For those of you who
05:38:58 11 can share this info, what is your salary increase budget
05:39:01 12 for FY07? Ours is 4 percent, but we manage it closer to
05:39:06 13 3 percent on average. Are you doing anything close,
05:39:08 14 more, or less?"

05:39:10 15 Here's an example, a salary increase budget is
05:39:13 16 another kind of market data an organization might use.
05:39:18 17 So what it looks like in this example is this looks like
05:39:24 18 a little survey, writing to whoever was on the email
05:39:27 19 chain, I can't remember. We can look it up, maybe, if
05:39:31 20 the -- if the -- all the recipients are on the thing.
05:39:35 21 But what the -- this person is looking for information
05:39:42 22 on what others are going to give for their expected
05:39:50 23 raise on average. So that budget -- that's maybe where
05:39:53 24 the word budget came from, I'm sorry about that.

05:39:55 25 So the idea here is another kind of market

05:39:58 1 data, to answer your question, is not on those specific
05:40:00 2 jobs, but on average, what is the raise going to look
05:40:04 3 like. What would the average raise look like this year.

05:40:06 4 And in this example, this person was talking
05:40:09 5 about 4 percent or maybe even closer to 3 percent, but
05:40:12 6 that's another kind of market data, just what are raises
05:40:18 7 going to look like next year.

05:40:23 8 Q. And for that to be an avenue, for the
05:40:27 9 transmission of suppression of compensation of some
05:40:32 10 employees to all or nearly all of the technical class,
05:40:37 11 that market data has to also be suppressed; is that
05:40:39 12 correct?

05:40:41 13 MS. DERMODY: Object to form.

05:40:43 14 THE WITNESS: The idea on this avenue -- we
05:40:45 15 talked about multiple avenues. The idea is -- so again,
05:40:50 16 there are a variety of reasons why I come to the
05:40:53 17 prediction that the suppression -- or that the
05:40:57 18 no-cold-call agreements led to -- predicted to suppress
05:41:04 19 the compensation of all of compensation is -- one avenue
05:41:09 20 is if raise information -- if there is suppression and
05:41:16 21 raises are going to be smaller because of suppression,
05:41:19 22 that could get transmitted back if those data are used
05:41:22 23 to propagate through a system.

05:41:25 24 MR. KIERNAN: Q. So if I understand what
05:41:26 25 you are saying, if the overall salary increase

05:41:31 1 budget for a year was lower because of the
05:41:36 2 suppression of compensation for some employees due
05:41:43 3 to the agreements, that could lead to suppression
05:41:47 4 for all or nearly all technical employees. Is that
05:41:50 5 what you are saying?

05:41:51 6 A. It's certainly the case that if the data --
05:41:54 7 what I'm saying here, the prediction here, is that if
05:42:01 8 the market data are -- for the raise, what the market is
05:42:05 9 talking about, the expected raise next year is
05:42:08 10 suppressed, then relying on those data to make raises
05:42:12 11 next year can be predicted to lead to suppression back
05:42:18 12 in those organizations that are using those data, which
05:42:20 13 I think is what you said. Slightly different words.

05:42:23 14 Q. And is it your testimony that it would be
05:42:26 15 predicted to impact all or nearly all of the technical
05:42:31 16 class if that condition were met?

05:42:40 17 A. If that particular condition were met. I want
05:42:42 18 to think about that because there are various
05:42:45 19 mechanisms. Certainly can be predicted.

05:42:52 20 So let me say it this way: If an organization
05:42:59 21 uses -- bases its raise this year, its average raise on
05:43:05 22 market data that's suppressed, and they use a smaller
05:43:09 23 number than they would have in the absence, and they
05:43:11 24 have a system then for doing that, say they gave an
05:43:14 25 across-the-board raise, which is a hypothetical example,

05:43:17 1 although there are examples of that in this case, then
05:43:21 2 if they're giving an across-the-board raise based on
05:43:24 3 market data, they would be given a smaller raise. So it
05:43:26 4 would affect all or nearly all.

05:43:28 5 Q. What if it were the fact -- facts that the
05:43:33 6 managers were provided a budget and were given
05:43:38 7 discretion to allocate that budget as they see fit?

05:43:45 8 A. I think that's the -- that -- that is the
05:43:49 9 same -- the same concern -- the same issue in the sense
05:43:52 10 that the budget -- that still applies, because that
05:43:58 11 budget, in the example -- in one of the avenues that
05:44:03 12 could lead to my conclusions, those budgets don't come
05:44:08 13 out of nowhere. They can come out of the use of market
05:44:11 14 data. So I think that that's just a subset of what we
05:44:14 15 just talked about.

05:44:17 16 Q. To test that theory, would you have to analyze
05:44:20 17 how a manager, in fact, allocated the additional -- or
05:44:26 18 the merit budget increases?

05:44:28 19 MS. DERMODY: Object to form.

05:44:30 20 THE WITNESS: So to test my prediction?

05:44:33 21 MR. KIERNAN: Q. Uh-huh.

05:44:35 22 A. Again, I haven't -- I made a prediction. I was
05:44:38 23 asked to comment on these two areas. So I'd want to
05:44:41 24 think about that. As an example of a more broader
05:44:45 25 question you asked earlier about how would one do a

05:44:49 1 study of estimating magnitudes, and that's not something
05:44:54 2 that I was asked to do.

05:44:57 3 Q. Can you turn to figure 12.

05:45:01 4 A. Sure.

05:45:16 5 MS. DERMODY: Figure 12 on 112.

05:45:18 6 THE WITNESS: Figure 12. I've got it.

05:45:21 7 Page 112.

05:45:22 8 MR. KIERNAN: Q. And this is the merit
05:45:23 9 increase matrix from Google; is that correct?

05:45:25 10 A. Yep.

05:45:26 11 Q. And this relates to base pay?

05:45:28 12 A. Again, we talked about that earlier this
05:45:31 13 morning before lunch, and --

05:45:36 14 Q. And you didn't know?

05:45:37 15 A. Well, we talked about salaries because of the
05:45:39 16 footnote to salaries.

05:45:41 17 Q. Right.

05:45:42 18 A. So we could speculate that this is about
05:45:43 19 salaries, but it doesn't -- I don't think it matters,
05:45:45 20 really, to the conclusion.

05:45:56 21 Q. We focused today, and your report appears to be
05:46:00 22 focused on impacts to base pay. Have you reached an
05:46:05 23 opinion on predictions -- strike that.

05:46:09 24 Have you analyzed whether suppression of
05:46:18 25 compensation in the form of bonuses or equity would be

05:55:12 1 I think, fixated on your specific examples.

05:55:14 2 Q. I asked you how that could happen. And you
05:55:17 3 said, well, the avenue it could happen is through market
05:55:20 4 data. So I want to know how it goes from one job title
05:55:23 5 to another --

05:55:24 6 A. Another could be through internal equity
05:55:25 7 concerns.

05:55:26 8 Q. Okay. How did that work --

05:55:28 9 A. I was thinking mostly about this. But it could
05:55:30 10 be that you have people doing one job, in one job title,
05:55:38 11 people doing another job in another job title that's
05:55:41 12 similar, and they see wages going up over here. They're
05:55:47 13 talking about their wages, compensation is going up in
05:55:49 14 the market, and I think that that adds to upward
05:55:52 15 pressure.

05:55:52 16 Q. So it would depend upon the employees in the
05:55:55 17 other job title knowing what the employees in that other
05:55:59 18 job title made?

05:56:00 19 A. No, not necessarily. That's -- that could be
05:56:03 20 one avenue. But it also could be that managers are
05:56:07 21 looking across, oh, they're kind of similar work and we
05:56:10 22 want to treat people equitably.

05:56:12 23 Q. Any evidence of that? Can you point to any
05:56:16 24 evidence where managers considered compensation of other
05:56:22 25 job titles when making compensation decisions for

05:56:26 1 members of their team?

05:56:29 2 A. I certainly can think of --

05:56:32 3 Q. Point it out to me.

05:56:33 4 A. Sorry.

05:56:34 5 Q. Including --

05:56:37 6 A. Sorry. Let me finish my answer. I certainly
05:56:39 7 can think of ones where it's within their job group, but
05:56:43 8 I'm not sure about job titles. So there are examples
05:56:46 9 here, well, what about equity concerns and so on. And
05:56:48 10 I'm just trying to remember if they were in different
05:56:50 11 job titles, so --

05:56:52 12 Q. Did managers --

05:56:53 13 MS. DERMODY: I'm sorry. You are talking over
05:56:54 14 each other.

05:56:55 15 MR. KIERNAN: Thank you.

05:56:56 16 THE WITNESS: Let me finish.

05:56:57 17 An example was the one we talked about, I think
05:57:01 18 it was [REDACTED]. We were talking about somebody with
05:57:04 19 [REDACTED] -- was somebody wanting to come in with
05:57:07 20 [REDACTED] salary. And they were saying would this cause
05:57:11 21 equity concerns relative to [REDACTED]. I can't remember
05:57:15 22 it precisely. If you can find it, I'd be happy.

05:57:18 23 MR. KIERNAN: Q. Yeah. 114. Is it 115?

05:57:20 24 It's one of these.

05:57:21 25 A. 115.

05:57:22 1 Q. 115.

05:57:24 2 A. So I don't know, they may have been the same
05:57:26 3 job title, they might have been the same -- but it could
05:57:29 4 actually be a different job title. It could be the
05:57:33 5 director of one functional area and a director of, you
05:57:36 6 know, the head of one functional area and the head of
05:57:38 7 another functional area.

05:57:40 8 And even pressure -- internal equity doesn't
05:57:46 9 have to mean the same job. There is a system. There is
05:57:50 10 a philosophy across the company. And if people in an
05:57:54 11 area that's really unrelated, if the wages are going up
05:57:58 12 in an area that are, say, even outside of this, a
05:58:04 13 technical nature, and nontechnical nature, still, people
05:58:08 14 are making comparisons across those two things.

05:58:10 15 Q. But you are assume -- Dr. Hallock, you are
05:58:12 16 assuming that, correct?

05:58:14 17 MS. DERMODY: Object to form.

05:58:14 18 MR. KIERNAN: Q. You are assuming that the
05:58:16 19 managers that are making compensation decisions for
05:58:20 20 different job titles are comparing the decisions
05:58:25 21 they're making.

05:58:28 22 A. You were asking me about whether I could find a
05:58:30 23 specific example of this happening across job titles.

05:58:33 24 Q. And you couldn't find one, correct?

05:58:35 25 A. No, I just began to look. I wondered if this

05:58:37 1 one where Ms. Morris was saying [REDACTED] is a strong
05:58:40 2 negotiator and would expect to be keeping his base
05:58:43 3 salary at [REDACTED], however I am recommending that he come
05:58:46 4 in slightly below in base because of internal equity
05:58:48 5 relative to [REDACTED]. And I was wondering if maybe
05:58:51 6 we knew what their job titles were.

05:58:53 7 Q. Do you know?

05:58:53 8 A. I don't know here, no.

05:58:54 9 Q. Okay.

05:58:56 10 A. And I -- so I wasn't saying I don't -- I can't
05:59:00 11 find one immediately upon asking.

05:59:06 12 Q. What are the conditions that are necessary for
05:59:09 13 internal equity to call employees in different job
05:59:14 14 titles, or that would cause an impact of compensation at
05:59:19 15 one job title to propagate, as you used the term, to
05:59:24 16 another job title?

05:59:27 17 A. Again, I think that's one of the multiple
05:59:29 18 mechanisms we talked about. And I think that this is a
05:59:36 19 sort of well-discussed issue in the -- in teaching in
05:59:42 20 practice and the literature on compensation, that there
05:59:47 21 needs to be some sort of -- that, you know, from a
05:59:51 22 psychological perspective or the academic perspective,
05:59:55 23 that one's inputs in their compensation are in some ways
06:00:01 24 related.

06:00:01 25 And so I'm -- some are saying that based on

06:01:17 1 some of those conditions might be similarity, right?

06:01:20 2 And so you could imagine this sort of a
06:01:23 3 neighbor, a job title that's near a job title, and there
06:01:27 4 is a -- there is tension there, pressure there. And
06:01:30 5 then to another job title that are similar. But as I
06:01:33 6 said before, you could even have very quite distinct job
06:01:36 7 functions, job families, functional areas, where one
06:01:42 8 might be marketing and one might be engineering, and
06:01:46 9 pressure on one, because it's the same organization,
06:01:49 10 could lead to pressure on the other.

06:01:51 11 MR. KIERNAN: Q. You could design a
06:01:53 12 formalized system where that would happen, or make
06:01:55 13 it more likely. Focusing on these individual
06:01:59 14 defendant companies --

06:02:01 15 A. Uh-huh.

06:02:02 16 Q. -- and focusing on internal equity avenue.
06:02:04 17 Okay?

06:02:06 18 A. Uh-huh.

06:02:06 19 Q. What were the features in place that would
06:02:11 20 cause you to predict that an impact of compensation in
06:02:14 21 one job title would propagate to other job titles?

06:02:20 22 A. Again, I'm -- I don't know what you mean by
06:02:23 23 features, but I'm thinking about the similarities of the
06:02:26 24 job or the similarities of the work or the sort of --
06:02:31 25 not even similarities, but contributions that they're

06:02:36 1 making.

06:02:37 2 Q. Okay.

06:02:37 3 A. Back to the language of my job evaluation
06:02:40 4 points as an example. If one person actually shows in
06:02:44 5 an example, I think it's Exhibit -- sorry, not an
06:02:48 6 exhibit, it's a figure. An example in figure 5, which I
06:02:53 7 don't think we discussed, where --

06:02:56 8 Q. That's out of your book, though, right?

06:02:57 9 A. Yeah.

06:02:58 10 Q. Can you use an example of one of the
06:02:59 11 defendants?

06:03:00 12 A. Well, I'm trying to answer the question. And
06:03:02 13 I'm trying to say that an engineer, if you have a
06:03:07 14 certain number of job evaluation points in one job
06:03:10 15 family, you might have a similar number in another job
06:03:13 16 family; and therefore, there is the idea that people
06:03:16 17 have similar contributions. And there you could say if,
06:03:21 18 by virtue of this system, this is one mechanism they're
06:03:26 19 judged to have similar contributions, they should be
06:03:28 20 paid similarly. So if there is pressure on one, there
06:03:31 21 should be pressure on the other.

06:03:32 22 Q. Which defendant did you find that mechanism to
06:03:35 23 be in place, that you just described?

06:03:37 24 A. I think the idea of the, you know, specific --
06:03:45 25 I don't -- I can't, as I'm sitting here now thinking

06:03:49 1 about the report, thinking about all the depositions I
06:03:51 2 read, can't think of an example on the spot of where
06:03:56 3 there was a -- an example of someone saying a person
06:04:00 4 over here in this job family led to pressure in this job
06:04:04 5 family over here.

06:04:07 6 Q. And can you point to any defendant that had a
06:04:11 7 mechanism where that would make that more likely?

06:04:16 8 MS. DERMODY: Object to form.

06:04:17 9 THE WITNESS: Again, this is, I think, back to
06:04:18 10 where we were before on the specifics of did it happen
06:04:21 11 or the predictions based on my knowledge of compensation
06:04:25 12 systems in the last 24 years, 20-whatever years, that
06:04:31 13 they're -- I'm sorry, I....

06:04:37 14 MR. KIERNAN: Q. Go ahead.

06:04:38 15 A. No. I just lost my train of thought because
06:04:41 16 you were saying something else. I'm sorry. Well, I
06:04:43 17 can't remember what I was saying.

06:04:46 18 MS. DERMODY: Do you want to read the question
06:04:47 19 back and draw your answer? Because you stopped when you
06:04:50 20 were watching counsel pass notes.

06:04:52 21 THE WITNESS: I saw him talking, so I'm sorry.

06:04:56 22 MR. KIERNAN: Q. Can you point to any
06:04:57 23 defendant who had a mechanism where it would make it
06:05:00 24 more likely that an impact to compensation in one
06:05:04 25 job title would propagate to another job title?

06:06:38 1 MS. DERMODY: Object to form.

06:06:44 2 THE WITNESS: Again, I think that there is two
06:06:47 3 steps. One is it's -- let's -- the manager is going to
06:06:53 4 make a decision about how the manager wants to make the
06:06:55 5 increases.

06:07:00 6 MR. KIERNAN: Q. Uh-huh.

06:07:00 7 A. And let's say that the manager has 10 percent
06:07:07 8 of her current staff's salaries to add on for next year,
06:07:13 9 that's how that would work. Let's say that she makes
06:07:17 10 that decision by giving a bunch of fives, some sixes,
06:07:23 11 some fours. That's when she understands she has a
06:07:30 12 10 percent increase budget.

06:07:33 13 If instead she's told she has a 5 percent
06:07:36 14 increase budget, she would give -- I think I said -- I
06:07:41 15 said before fours, fives and sixes when she had a 10 --
06:07:44 16 that's a bad example. Let me start again.

06:07:48 17 Q. Just use that example. I'm following your
06:07:50 18 logic.

06:07:52 19 A. Let's say -- I'm sorry. I don't know why you
06:07:55 20 would be giving four, five and sixes if you had 10. But
06:07:58 21 let's say that under one budget allocation she was
06:08:01 22 giving four, fives and sixes. Let's say, then she's
06:08:06 23 given a smaller budget allocation and she was giving,
06:08:10 24 instead of fours, fives, and sixes, two, two and a
06:08:15 25 halves, and threes.

06:08:17 1 She's giving twos to people that she wants --
06:08:19 2 in one scenario she's giving fours because she has more
06:08:22 3 money. In the other scenario she's giving those same
06:08:26 4 people two. In the first scenario she's giving sixes.
06:08:28 5 In the second scenario she's giving those same people
06:08:31 6 three.

06:08:31 7 So it still follows in that case when
06:08:34 8 individual managers are making individual decisions.
06:08:38 9 Because they're making their decisions, and they're
06:08:41 10 going to make their decisions. And if they've got
06:08:44 11 larger numbers, imagine -- I should have said it this
06:08:48 12 way.

06:08:49 13 A manager makes decisions within the framework,
06:08:54 14 and let's say that the manager is told wait a minute,
06:08:58 15 we're going to cut the budget in half, just divide all
06:09:01 16 those numbers by two. It's a little bit different than
06:09:04 17 that, depending on how many workers are in each group,
06:09:06 18 but that's roughly the case. So I don't think that has
06:09:09 19 an impact. I thought you were asking that question when
06:09:11 20 you brought this up earlier.

06:09:13 21 Q. But you were assuming, Dr. Hallock, that the
06:09:16 22 manager would make the allocation -- the same allocation
06:09:21 23 in both scenarios, just lowering the percentage but by
06:09:26 24 the same rate; isn't that right?

06:09:32 25 In other words, a manager could decide with,

06:09:34 1 let's say, more money, going the opposite way, with
06:09:38 2 additional funds, I can give all that extra money to my
06:09:42 3 high performers and keep the low performers the same?

06:09:46 4 A. But I don't think -- I think what you are
06:09:48 5 trying -- what you are saying to me is what would a
06:09:51 6 manager do in a case where she had a certain budget, and
06:09:54 7 what would a manager do in a case where she had another
06:09:57 8 budget.

06:09:58 9 And it's -- it seems to me inconceivable that
06:10:04 10 she would -- I'm going to give an extreme example -- but
06:10:07 11 that she would allocate, in one scenario, the money
06:10:10 12 evenly to all the workers; and if she had a lot more
06:10:13 13 money, she would give all of the money to one worker.
06:10:16 14 So why would she change the relative -- why would she
06:10:19 15 change the relative mixes if she were faced with a
06:10:27 16 bigger budget?

06:10:29 17 Q. If the evidence showed that that, in fact, did
06:10:32 18 happen, where managers that had additional budget money
06:10:37 19 allocated it disproportionately than they did before,
06:10:43 20 would that cause you to change your opinion?

06:10:45 21 MS. DERMODY: Object to form.

06:10:47 22 THE WITNESS: I think that what you are talking
06:10:48 23 about is a situation where your example is a situation
06:10:53 24 where a manager is making a decision, in another period
06:10:57 25 a manager is doing something else.

06:11:00 1 We're talking -- prior to that you and I were
06:11:03 2 talking about when I was talking about five and ten or
06:11:06 3 the four, five and six, or the two, two and a half and
06:11:09 4 three, a situation where we're exactly facing the same
06:11:13 5 decision at the same point in time. And you're -- I
06:11:18 6 think what you are proposing is if you saw something.
06:11:21 7 Well, you can't see the counterfactual or the but-for
06:11:25 8 situation.

06:11:25 9 MR. KIERNAN: Q. Well, let's look at
06:11:26 10 figure 12.

06:11:27 11 A. Okay.

06:11:28 12 Q. So let's assume that the merit increase budget
06:11:32 13 is 5 percent.

06:11:35 14 A. Okay.

06:11:36 15 Q. Okay. And the guideline is pay 0 percent for
06:11:41 16 any of the employees that fall within these various
06:11:46 17 categories set forth in figure 12, correct?

06:11:48 18 A. Yes. So for example, someone with a 2.9
06:11:50 19 percent performance rating. No guideline for merit.

06:11:55 20 Q. Right.

06:11:55 21 A. Yes.

06:11:57 22 Q. And if you had a -- you know, a 3.1 percent --
06:12:02 23 or 3.1 performance rating --

06:12:04 24 A. Uh-huh.

06:12:05 25 Q. -- and you are at 90 percent through 120

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18 | Reading and Signing was waived.

19 Reading and signing was not requested.

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